

3-16-2009

State v. Herrera Clerk's Record v. 2 Dckt. 34193

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LAW CLERK

Vol. 2 of 8

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

State of Idaho,

PLAINTIFF/RESPONDENT

Vs.

Valentino Herrera,

DEFENDANT/APPELLANT

FILED - COPY

MAR 16 2009

Supreme Court Court of Appeals
Entered on ATS by

Appealed from the District Court of the Fifth
Judicial District for the State of Idaho,
in and for Cassia County
Honorable John M. Melanson, District Judge

Lawrence Wasden
Attorney for Plaintiff/Respondent

Molly Huskey
Attorney for Defendant/Appellant

Filed this ____ day of _____, 20__

Clerk

By _____ Deputy

34193

**IN THE SUPREME COURT
OF THE STATE OF IDAHO**

State of Idaho,)	
)	
Plaintiff/Respondent,	)	District Court No. CR-2006-3507*D
)	
Vs.)	
	)	Supreme Court No. 34193
Valentino Herrera,)	
)	
Defendant/Appellant,)	
)	
)	

CLERK'S RECORD ON APPEAL

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

**THE HONORABLE JOHN M. MELANSON
DISTRICT JUDGE**

Lawrence Wasden
Attention: Appellate Unit
700 West Jefferson Street
Boise Idaho 83720-0010

Molly Huskey
State Appellate Public Defender
3647 Lake Harbor Lane
Boise Idaho 83703

TABLE OF CONTENTS

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Table of Contents		02
Index		08
ROA		401
Court Minutes on Defendant's Motions and For Re-Sentencing	02/13/08	14
Notice of Hearing Status Conference	02/14/08	16
Minutes	03/14/08	17
Order Appointing Counsel	03/14/08	18
Notice of Hearing-Status Conference	03/14/08	20
Motion for Payment of Attorney Fees	03/20/08	21
Order Approving Payment of Attorney Minutes	04/02/08	23
Notice of Hearing	04/14/08	25
Notice of Hearing	04/14/08	26
Notice of Hearing	04/14/08	27
Motion to Continue	05/02/08	28
Order to Continue	05/05/08	30

TABLE OF CONTENTS

**State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818**

DOCUMENT NAME	DATE FILED	PAGE NO.
Letter to the Mike Tribe (Attorney)	05/08/08	32
Letter to the Judge	05/08/08	38
Letter to the Judge	05/12/08	60
Letter to the Judge	05/12/08	78
Memorandum in Support of Pro Se Motions	05/16/08	84
Letter to Mike Tribe (dated April 4, 2008)		102
Letter to Mike Tribe (dated April 8, 2008)		111
Letters to Mike Tribe	05/19/08	118
Memorandum of Law and Correction	05/19/08	127
Notice of Hearing	05/19/08	147
Minutes	05/20/08	148
Letter to Mike Tribe	05/23/08	150
Affidavit of Defendants and Request	05/28/08	165
Memorandum of Law and Correction	06/03/08	172
Letter to Mike Tribe	06/05/08	185
State's Memorandum Opposing Pro Se Motions	06/09/08	192
Minutes	06/09/08	196

TABLE OF CONTENTS

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Memorandum Decision and Order on Defendant' s	07/28/08	
Post-Trial Motions		
Notice of Hearing	07/28/08	211
Notice of Trial Setting	07/28/08	212
Motion for Automatic Disqualification of District	08/05/08	214
Judge in Pending Jury Trial ect.		
Motion to Dismiss Part II Persistent Violator Status	08/25/08	216
Amended Information		
Letter to the District Clerk	08/25/08	222
Order Denying Motion to Disqualify Judge without	08/27/08	223
Cause		
Objection to Defendant's Motion to Dismiss	08/28/08	225
Affidavit of Defendant's Motion for Appointment	09/02/08	227
of New Counsel		
Motion for Appointment of New Counsel	09/02/08	231
Motion to Continue Hearing	09/02/08	233
Memorandum of Law and Correction	09/04/08	235

TABLE OF CONTENTS

**State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818**

DOCUMENT NAME	DATE FILED	PAGE NO.
Request for Hearing	09/04/08	253
Minutes	09/05/08	255
Order Denying Motion for Appointment of New Counsel	09/05/08	258
Notice of Hearing	09/05/08	260
Notice of Hearing	09/05/08	261
Notice of Hearing	09/09/08	262
Notice of Hearing	09/10/08	264
Notice of Hearing	09/10/09	265
Order Granting Defendant's Motion to Proceed	09/10/08	266
Pro Se and Appointing Standby Counsel		
Order re: Scope of Duties of Standby Counsel	09/10/08	269
Pretrial Order	09/10/08	275
Fourth State's Supplemental Discovery Response	09/16/08	278
Memorandum in Support of Motion to Dismiss	09/17/08	280
Part II Persistent Violator Status		

TABLE OF CONTENTS

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Order Denying Motion to Dismiss Part II of the Information	09/19/08	306
Motion to Terminate Pro Se Representation	09/19/08	308
Motion to Continue Hearing	09/22/08	310
Notice of Hearing	09/22/08	312
Motion to Reconsider Motion to Discuss Part II Amended Information Persistent Violator and Memorandum in Support of Motion to Dismiss Part II Amended Information Persistent Violator	09/22/08	314
Notice of Hearing	09/22/08	316
Notice of Hearing	09/22/08	318
Notice of Hearing	09/22/08	320
Notice of Hearing	09/22/08	322
Trial Witness List		323
Plaintiff's Trial Exhibit List		324
Minutes	09/23/08	325
Minutes	09/2308	336

TABLE OF CONTENTS

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Jury Roll Call	09/23/08	339
Peremptory Challenge	09/23/08	343
Jury Verdict	09/23/08	344
Order for Presentence Report and Evaluations	09/23/08	368
Notice of Hearing Sentencing	09/23/08	369
Notice of Hearing Vacated and Reset	10/22/08	370
Motion to Arrest Judgment	10/24/08	372
Minutes	10/27/08	379
Judgment of Conviction and Order of Commitment	10/27/08	380
Order Denying Defendant's Motion	11/04/08	384
Order of Restitution	11/04/08	386
Order of Restitution	11/04/08	388
Motion for Appointment of State Appellate Public Defender	12/12/08	390
Order for Appointment of State Appellate Public Defender	12/19/08	392
Notice of Appeal	12/04/08	394

INDEX

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Order Denying Motion to Dismiss Part II of the Information	09/19/08	306
Affidavit of Defendant's Motion for Appointment of New Counsel	09/02/08	227
Affidavit of Defendants and Request	05/28/08	165
Court Minutes on Defendant's Motions and For Re-Sentencing	02/13/08	14
Fourth State's Supplemental Discovery Response	09/16/08	278
Index		08
Judgment of Conviction and Order of Commitment	10/27/08	380
Jury Roll Call	09/23/08	339
Jury Verdict	09/23/08	344
Letter to Mike Tribe	05/23/08	150
Letter to Mike Tribe	06/05/08	185
Letter to Mike Tribe (dated April 4, 2008)		102

INDEX

**State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818**

DOCUMENT NAME	DATE FILED	PAGE NO.
Memorandum Decision and Order on Defendant' s	07/28/08	
Post-Trial Motions		
Minutes	09/05/08	255
Minutes	09/23/08	325
Minutes	09/23/08	336
Minutes	10/27/08	379
Motion for Appointment of New Counsel	09/02/08	231
Motion for Appointment of State Appellate Public	12/12/08	390
Defender		
Motion for Automatic Disqualification of District	08/05/08	214
Judge in Pending Jury Trial ect.		
Motion for Payment of Attorney Fees	03/20/08	21
Motion to Arrest Judgment	10/24/08	372
Motion to Continue	05/02/08	28
Motion to Continue Hearing	09/02/08	233
Motion to Continue Hearing	09/22/08	310
Motion to Dismiss Part II Persistent Violator Status	08/25/08	216

INDEX

**State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818**

DOCUMENT NAME	DATE FILED	PAGE NO.
Letter to Mike Tribe (dated April 8, 2008)		111
Letter to the District Clerk	08/25/08	222
Letter to the Judge	05/08/08	38
Letter to the Judge	05/12/08	60
Letter to the Judge	05/12/08	78
Letter to the Mike Tribe (Attorney)	05/08/08	32
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Memorandum of Law and Correction	09/04/08	235
Minutes	03/14/08	17
Minutes	04/14/08	25
Minutes	05/20/08	148
Minutes	06/09/08	196

INDEX

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Amended Information		
Motion to Reconsider Motion to Discuss Part II	09/22/08	314
Amended Information Persistent Violator and Memorandum in Support of Motion to Dismiss Part II Amended Information Persistent Violator		
Motion to Terminate Pro Se Representation	09/19/08	308
Notice of Appeal	12/04/08	394
Notice of Hearing	04/14/08	26
Notice of Hearing	04/14/08	27
Notice of Hearing	05/19/08	147
Notice of Hearing	07/28/08	211
Notice of Hearing	09/05/08	260
Notice of Hearing	09/05/08	261
Notice of Hearing	09/09/08	262
Notice of Hearing	09/10/08	264
Notice of Hearing	09/10/09	265
Notice of Hearing	09/22/08	312

INDEX

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Notice of Hearing	09/22/08	316
Notice of Hearing	09/22/08	318
Notice of Hearing	09/22/08	320
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Notice of Hearing Sentencing	09/23/08	369
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Order Denying Defendant's Motion	11/04/08	384
Order Denying Motion for Appointment of New Counsel	09/05/08	258
Order Denying Motion to Disqualify Judge without Cause	08/27/08	223

INDEX

State of Idaho vs. Valentino Herrera
District Court Case No. CR-2006-3507*D
Supreme Court Case No. 34818

DOCUMENT NAME	DATE FILED	PAGE NO.
Order for Appointment of State Appellate Public Defender	12/19/08	392
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Request for Hearing	09/04/08	253
ROA		401
State's Memorandum Opposing Pro Se Motions	06/09/08	192
Table of Contents		02
Trial Witness List		323

DISTRICT COURT
CASSIA COUNTY ID
FILED
2008 FEB 13 P 3:31
LARRY A MICKELSEN
BY [Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA
* * * * *

STATE OF IDAHO,	)	CASE NO. CR-2006-3507*D
)	
Plaintiff)	
)	
Vs.	)	COURT MINUTES ON
	)	DEFENDANT'S MOTIONS AND FOR
VALENTINO HERRERA	)	RE-SENTENCING
)	
Defendants,)	
)	

JOHN M. MELANSON, District Judge DUANE SMITH, Clerk
Maureen Newton, Court Reporter Janet Sunderland, Deputy Clerk

DATE: February 11, 2008
TIME: 2:47 p.m.

Present in courtroom on behalf of the State is Mr. Blaine Cannon, Present on behalf of the defendant is Mr. David Haley. The defendant is also present. Before court today for a re-sentencing explains - as well as some Pro Se Motions filed by defendant, notes that Mr. Haley has just been appointed

Mr. Haley: makes comments to the Court re: case, has just been appointed but notes has never been provided with a copy of the file in this case explains - notes that defendant has filed motions on a pro se basis which will require extensive review of case, notes that Mr. Kent Jensen was defense counsel at trial explains, Notes that he will be leaving the public defender's office a week and a half explains - PD's office does not presently have a conflict explains prior conflict but not now, aware of fact that defendant has written letter to Court asking

Court Minutes - 1

000014

that Mr. Byington not take up case but will leave up to Mr. Byington and Mr. Herrera to resolve continues - premature to go forward today, suggest that matter be reset in approximately 30 days for full status

Mr. Cannon: responds - difficult to go forward with re-sentencing without first resolving some of motions filed, ask that in future any motions filed be heard in Cassia County due to difficulty in transporting continues -

Mr. Haley: nothing further

Court responds - appropriate to continue matters - will reset this matter in Cassia County, will coordinate with Cassia County Court and send out notice for a status to discuss what is left to be decided in this case and when they can be set for hearing.

Mr. Haley: will instruct secretary to obtain copy of file and trial transcript for their file today when get back to office continues -

In recess @ 2:56 p.m.

000016

FILED
CASSIA COUNTY 1713

FILED

2008 MAR 14 P 2:28

CLERK OF COURT

Date: 3/14/2008

Time: 02:37 PM

Page 1 of 1

Fifth Judicial District Court - Cassia County

BY
DE

User
SUTHERLAND

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Status	Minutes date:	03/14/2008
Assigned judge:	John Melanson	Start time:	02:22 PM
Court reporter:	Maurine Morton	End time:	02:22 PM
Minutes clerk:	Stella Sutherland	Audio tape number:	
Prosecutor:	County Prosecutor		
Defense attorney:	Public Defender		

Tape Counter: 223	Defendant in Custody present with attorney Tim Schnieder. Blaine Cannon Present For the State.
Tape Counter: 224	Court reviews case file and motions that Defendant filed Pro se. Tim Schnieder addresses the Court reviews possible conflict; cites considerations. Court addresses the Defendant re: Attorney conflict. Defendant addresses the court re: review conflict. Blaine Cannon addresses the Court re: possible attorney conflict; cites considerations.
Tape Counter: 229	Court addresses counsel re: conflict and appointing new counsel.
Tape Counter: 232	Tim Schnieder responds re: Attorney Conflict. Court will appoints Mike Tribe to represent Defendant as counsel of record; cites considerations.
Tape Counter: 233	Status Conference to be set in 30 days. Hearing concluded.

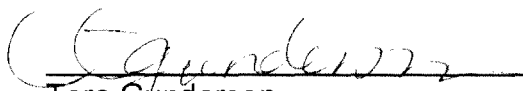
000017

ORDER APPOINTING COUNSEL - 1

CERTIFICATE OF MAILING

I hereby certify that on this 14 day of March 2008 I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Blaine Cannon X Courthouse Box
P.O. Box 7
Burley, ID 83318
2. Timothy Schneider X Courthouse Box
P.O. Box 188
Burley, ID 83318
3. Michael Tribe X U.S. Mail
P.O. Box 396
Rupert, ID 83350


Tara Gunderson
Deputy Clerk

FILED

2008 MAR 14 P 2:32

CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

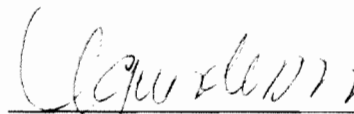
Defendant.

Case No: CR-2006-0003507 D

NOTICE OF HEARING
STATUS CONFERENCE

NOTICE IS HEREBY GIVEN that the above-entitled matter is set for
hearing on **Monday, April 14, 2008** at **01:00 PM** in the District Courtroom of the
above-entitled court.

DATED: 3/14/2008.



TARA GUNDERSON
Deputy Clerk

pc: County Prosecutor
Michael P Tribe
Minidoka Clerk
P & P

000020

1. *Chlorophyll a* (Chl a) is the primary photosynthetic pigment in most plants and algae. It is a green pigment that absorbs light energy in the blue and red regions of the visible spectrum. Chl a is essential for the light-dependent reactions of photosynthesis, where it converts light energy into chemical energy in the form of ATP and NADPH.

NCW

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Clayne S. Zollinger, Jr.
Attorney for Plaintiff

I hereby certify that on this 19 day of March 2008, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger Jr
Attorney At Law
P.O. Box 210
Rupert, ID 83350

_____x___ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

_____ By telecopying copies of the same to said attorney(s) at the telecopied number(s) _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

Clayne S. Zollinger, Jr.

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney at Law

P. O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Facsimile: (208) 436-7837

Attorney for: Defendant

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO HERRERA,

Defendant.

Case No: CR-2006-03507 D

**ORDER APPROVING PAYMENT
OF ATTORNEY**

The Court having heard the Motion heretofore made in the above-entitled action by Clayne S. Zollinger, Jr., Court-Appointed attorney for the defendant, and the Court being fully advised in the premises;

IS HEREBY Approved, that the that the amount of \$148.50 For 2.7 hours Is approved as payment for court appointed services rendered by Clayne S. Zollinger, Jr. in the above-entitled matter.

DATED this 19 day of March, 2008.


Judge

000023

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of ^{April} March, 2008, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Doug Abenroth
Prosecuting Attorney
PO Box 7
Burley, Idaho 83318

Clayne S. Zollinger Jr
Attorney At Law
P.O. Box 210
Rupert, ID 83350

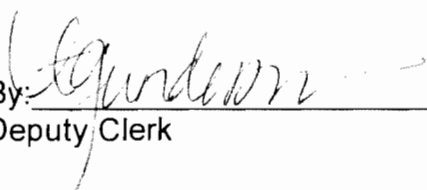
Cassia County Auditor
1459 Overland Ave
Burley, ID 83318

_____ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

_____ By placing a copy of the same to said attorney(s) in the courthouse basket located in the Magistrate Court Clerk's office, located in the Courthouse in Rupert, Idaho.

LARRY MICKELSEN, CLERK OF THE COURT

By: 
Deputy Clerk

000024

DISTRICT COURT
CASSIA COUNTY ID

FILED

2008 APR 14 P 2:27

LARRY A MICKELSEN

User: TARA

BY
DEPUTY

Date: 4/14/2008

Fifth Judicial District Court - Cassia County

Time: 02:27 PM

Minutes Report

Page 1 of 1

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Status	Minutes date:	04/14/2008
Assigned judge:	John Melanson	Start time:	01:00 PM
Court reporter:	Maureen Newton	End time:	01:00 PM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	County Prosecutor		
Defense attorney:	Michael P Tribe		

Tape Counter: 110 The defendant is present and is in custody.

Michael Tribe is present on behalf of the defendant.

Blaine Cannon is present on behalf of the State of Idaho.

Court reviews case to date.

Tape Counter: 111 Michael Tribe addresses the Court re: 5-6 outstanding motions; would like those motions set prior to resentencing.

Michael Tribes reviews pending motions:

- Motion for new trial
- Motion to strike or suppress PSI Addendum
- Motion to strike psychological exam of Dr. Smith
- Motion to strike persistent violator charge
- Motion to withdraw plea of guilty
- Motion for bail pending appeal

Tape Counter: 113 No objection by the State to setting these motions prior to resentencing.

Tape Counter: 114 The pending motions are to set within the next 2-3 weeks.

Michael Tribe cites the time frame is sufficient.

Sentencing to be set approximately 2 weeks after the motions are set.

Michael Tribe requests permission to file additional briefing.

No objection by the State.

Tape Counter: 116 Hearing concludes.

000025

FILED _____

2007 APR 14 P 2:22

LARRY A MICKELSEN

BY _____
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.


VALENTINO ALEX HERRERA,

Defendant.

)
)
) Case No: CR-2006-0003507 D
)
)
) NOTICE OF HEARING
) Pending Motions
)
)
)
)
)
)

NOTICE IS HEREBY GIVEN that the above-entitled matter is set for
hearing on **Monday, May 05, 2008** at **01:00 PM** in the District Courtroom of the
above-entitled court.

DATED: 4/14/2008.



TARA GUNDERSON
Deputy Clerk

pc: County Prosecutor
Michael P Tribe
P & P

000026

BY ~~FOR THE~~

000027

Michael P. Tribe, Esq.
ROBINSON & ASSOCIATES
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 6816

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

) Case No. CR 2006-3507

)

)

)

)

)

)

)

)

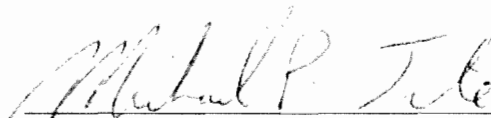
MOTION TO CONTINUE

COMES NOW the defendant, by and through his attorney of record, Michael P. Tribe of the firm Robinson & Associates, and moves this Court to continue the hearing currently scheduled for May 5, 2008 on the grounds and for the reason that counsel for the defendant needs more time to review the previously-filed motions and briefs filed by the defendant *pro se* in this matter. We would further request that the sentencing currently scheduled for May 19, 2008, be

MOTION TO CONTINUE-1

vacated and rescheduled for a later time. The Prosecutor's Office does not have any objection to this matter being continued.

DATED this 2nd day of May, 2008.



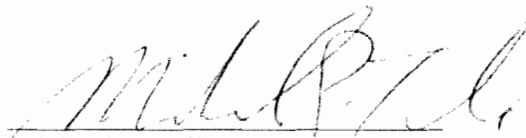
Michael P. Tribe
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of May, 2008, I served a copy of the foregoing **Motion to Continue** upon:

Blaine Cannon
Deputy Prosecuting Attorney
Cassia County
P.O. Box 7
Burley, Idaho 83318

by faxing a copy thereof, then depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.



Michael P. Tribe

Michael P. Tribe, Esq.
ROBINSON & ASSOCIATES
 Attorneys at Law
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
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 ISB No. 6816

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff

vs.

VALENTINO ALEX HERRERA,

Defendant.

Case No. CR 2006-3507

ORDER TO CONTINUE:

This matter having come before the Court on the defendant's Motion to Continue,
and the Court being fully advised in the premises and for good cause appearing,


IT IS HEREBY ORDERED that the hearing currently scheduled for May 5, 2008 be vacated and reset for May 19, 2008, at 1:00 o'clock p.m.

IT IS FURTHER ORDERED that the sentencing currently scheduled for May 19, 2008, be vacated and reset for June 9, 2008, at 2:30 p.m.

ORDER TO CONTINUE - 1

0000.50

DATED this 2nd day of May, 2008.


District Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 5 day of May, 2008, I served a copy of the foregoing Order to Continue upon:

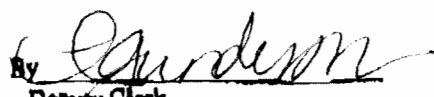
Blaine Cannon
Deputy Prosecuting Attorney
Cassia County
P.O. Box 7
Burley, Idaho 83318

Michael P. Tribe
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, Idaho 83350

P&P

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing addresses.

CLERK OF THE COURT

By 
Deputy Clerk

ORDER TO CONTINUE - 2

000031

CR-2004-3507

Cassia County
Court House, Burley, ID

FILED
2004 MAY -9 A 124308
CLERK OF DISTRICT COURT
CASSIA COUNTY ID
Cg

Dear Clerk of the District Court

Please find enclosed ^(copy) a letter to Mike Tribe
written by my hand for filing in Case no:
CR-2004-3507 *D in Cassia County for
record purposes of my appeal to the
Court of Appeals or the Supreme Court
of Idaho.

If applicable please provide the prosecutors
office with a copy as I am short of
funds.

As always, you have my gratitude

Sincerely
Valentino
Therrell
Daford

cc: Blaine Cannon
Mike Tribe
Judge Melanson.

000032

Case No: CR-04-3507-00
April 25 2008

WIKI

U.S. (1944). "What Best Labs A Construction... Shall
I want you to look to S.H.U.S. 368 Beachm...
the U.S. and that of the State? I agree. I
afford. It is a matter of the best labor off
no more and of - - - - -
the best - - - - -

It is therefore not the law of the jurisdiction in which the proceedings were held. § 921(a)(2)(C) (the choice of law clause).

This report states that a bus from a passenger set
made or for which a person has been provided - it has had

1. All rights reserved. Shall not be reproduced or further.

Yes I can already hear your mind talking. I also can hear you trying to convince me that I still have a vestiges because of Rhinology, not true. I don't like the state of our body (Rhinos) R's

4-25-8

000034

was addressed to the...
[400 US 113] however, as the...
does not alter the historical fact of the...
not open the way to a license despite the...
positive or affirmative action...
Our argument then is that...
argue that expansion...
only positive or affirmative action does.
At 1137 (Quercy 911 F.2d 219 (4th Cir. 1990))
the...
have been...
(a)(2) ...
section 901(a)(2) ...
give effect to state reforms...
of an exempt...
lost only to the...
of...
in...
in...

The Court says, "We are not persuaded that these (restrictions) curiously the effect of Bell's broad rest- creation of rights prevails and the Attendant Statutes ex- pressly granting to dis-charged felons the right to vote and serve on a jury."

Mike, lets now turn the page to 961 F 2d 1003.

U.S. v. Ramos (1st Cir 1992), and view what the 1st Cir. says about its opinion on Civil Rights and restoration, on § 921(a)(2). "Our above reading comports with the plain words of the statute, which, reluctantly, makes an exception only for a subset of for which civil rights were "restored". The word

"restore" means "to give back (as something lost or taken away)". Webster's Third New International Dictionary (1971) The point is not just that civil rights were never lost, but that, following conviction, such rights were affirmatively "restored".

Mike, let us wrap this up by saying this. Prior to the change of the law, Section 18-310 (a) can be before by 1971 Mike had that the restored

rights were never lost and that the effect of that

will be to place the "rights" in the hands of the

my first name, I.D. References a legislative history show

that Congress didn't want to do it. I also was to make
it clear that there was a house floor bill to follow

to wipe the slate clean in response to particular conditions
by issue, parties and by other similar individualized and
affirmative procedures such as reorganization or restructure
of the courts.

Because deliberate did this for exclusion over the years
the restoration was automatic. Until we came in 1962,

deliberate restoration was unique at the time. It is it
was as if it was from a different era, extremely

and their legislative history. In effect, deliberate was unique
the state of affairs. I don't follow in the past.

Thus the changing of the name, deliberate reflected the
right to have views, by a somewhat formalized the group

was always seen for some degree of a man for so
was to the fact the cracks, but not, I only a

I was known to be a man of the law.
I think maybe I was for a couple of years to a

has been coming and that's what he came to be.

CC Ltr Letter to Mike page 4
V.H.L.
4-25-8
000036

Certificates of Mailing

I Hereto Certify that on the 25th day of April,
2008 I mailed a true and correct copy of:

Letter to Mike
4-25-8

via the, (MCCJC. mail system) for processing to the
United States mail system addressed to the following parties:

The Honorable Jan. Nelson
Minidoka County Courthouse
711 G. Street
Rupert Idaho 83350

Mike Tribe
Attorney At Law
P.O. Box 396
Rupert Idaho 83350

Cassia County Clerk of the District Court
Cassia County Courthouse
1459 Overland
Burley Id 83318

Valentino Herrera
Valentino Herrera
U.S. Attorney
Burley Id. 83318

CC. File
V.H.

Letter to Mike page 5
4-25-8

000037

District Court

DISTRICT COURT
CASSIA COUNTY ID

FILED

2008 MAY -8 PM 12: 58

LARRY A. HENSEN

BY

5-5-08

Dear Clerk of the Court

Please file this letter;

C.C. file to His Honor 2/21

In Court Case ^{no.} in Cassia County CR 06-3507*0
for Court record purposes to keep on
file for the Court of Appeals and
or the Supreme Court of Idaho to
review, on appeal.

As I am short of funds please
if applicable, provide the County prosecutor
with a copy for his personal file.

As Always Dear clerk of The Court
I thank you.

Sincerely,

Valentino Herrera

Valentino Herrera

5-5-08

cc: Blaine Cannon
Mike Tribe
Judge Melanson

000038

5th of May
Cinco de Mayo 2008

2008

I'm writing to you so that you may read my point of view, and my opinion on Idaho, and Federal law. Granted your Honor, I'm not an authority on law and I'm not claiming to be. I can fully understand Idaho's good intentions to enact some of the laws they pass. But as unfortunate as this may sound Idaho is not immune to making mistakes.

Albeit, I do not believe, as one, that Idaho was intentionally or purposely intended for its felons to slip thru the cracks and escape punishment of its statutes by loopholes, but as unfortunate, as it is, at times, they do. Your Honor, I understand the charge of persistent violator status now.

I didn't last year I honestly did not know it carried life. If my lawyer was connected to my face I would have had to pick it up off the floor when you told me what it carried. I was stunned and never informed by Kent Jensen that I

CC file 70 His Honor 1/21
over please

2)

was being charged with this particular offense. I was very much in a lost, drug impaired, state of mind back then. I was not thinking clearly at all. Any one in their right frame of mind would have taken the deal that Kent Jensen said the State was offering. Yet theres no record of any plea being offered, even though Kent said there was. Your Honor, I ~~have~~^{had} three convictions on my record. One in 1982, for burglary, I was 18 years old. At the time I was sent to N.I.C.I. Cottonwood program, by His Honor, George Ginnata. (R.I.P.). While I was there I met a fellow inmate by the name of David Wageman. He is also from Berkeley. He told me that he also received 5 years by His Honor Ginnata. David also went on to explain that he had been accepted by the Naval Academy and would accept him if His Honor would dismiss the charges. His Honor told David, "your not going to escape your punishment by Naval interference. David got sent up. After our completions of

our ridus (we both made it) I never

seen David again until 2002. Twenty

years later. I seen him at all places

at Boyd's under grand leaving. I don't drink

but I did go there to visit friends. I

also didn't recognize David, but he did

me. He asks me, "hey, aren't you Shiff?"

"yes", remember me. No. It's me Burrhead."

I say "hey you been? you know

what he told me? your Honor, he tells

me was close to retiring from the

National Guards. I ask him how's that?

weren't you a convicted felon? the judge

yes. Now Judge, I'd be lying to you if

I told you I remember word for word

what he told me that night, because I

don't. I don't recall it he told me he

went to the Navy, because I think he

did go back. But the Navy told him to

beat it, try the army. So he did.

he was accepted in the Guards, even

though he was a felon. They gave on to

be very successful. God bless him. My

point is this, it was the laws of

I date back then that made it easy to

C.I. file of the time 3/21

000041

our place.

4)

(erased)

overlook an excellent Status. Accordingly I have one more story. This one involves an friend of mine who no longer is among us, R.I.P. His name was Raphael Hernandez. He was from Ohio. I met him around 1984. He got arrested in 84 or 85 for drug ^(felony) possession. He was given probation. He was later discharged. At the time he was working for J.R. Simplot. I believe around 1994 he put in an application to work as a Jailer here ~~in~~ M.C.C.J.C. I remember seeing him here many times. He told me that he seen an ad. in the paper and he applied. He was interviewed by Dennis Dexter and hired. I asked him about his prior conviction. He told me he wasn't going to say anything nor did he, but he said Dennis Dexter told him, "Hey I know about your prior felony, but I'm going to keep you on. Judge, the reason I'm telling you those stories is because I believe that the recruiter and Dennis knew something I didn't. And that is that Idaho

5)

(and Gun rights)

restored David and Raphael's Civil rights.
Thus nullifying the existence of any
prior conviction in their past historical
records. Both were convicted in the
1980's as was F. I. had two con-
victions. 1982, 1988, Prior to 7-1-90

Prior to 1991 all ex felons
that were convicted in Idaho Courts
were all restored their civil rights, ^{and} ^{firearms}
we did not have to apply for them ^{Rights} the
Restoration was automatic, and very
affirmative. This changed in 1991,
because of (Shorty) Baldemar Gomez R.I.P.

State v. Gomez 94 Idaho 323 1972

Gomez committed his first felony
here in Cassia County back in 1972
or 73. He killed a man by the
last name of Hood, R.I.P. at the
East side bar in Burley. He went to
trial, and was convicted of second
degree murder. Gomez went on to commit
4 more felonies. His last one which
would have been number 6 was
overturned by our 9th Circuit in 1990.
cc. file To His Honor 5/21

000043

(c)

Your Honor, the point I'm making here is that Idaho, prior to 91 was wiping the slate clean as to the status of a convicted felon in the Idaho State Courts. I know that the legislature did not intend for this to happen, but nobody knew the ramifications of Idaho's Broad restoration provision until Gomez was ruled on. Thus the changing of the Law on July 1st 1991, restricting firearms

Now your Honor, I know your probably thinking that none of the cases that I'm going to write to you about or the ones I've wrote to you about have nothing to do with the persistent violator status, but it does. You'll also say that they ^(only) have to do only with firearm status. Not true Your Honor.

Do you honestly think that Congress would allow a state to give back an ex-felon the right to keep and bear arms if they had any kind

7)

(on their Record)

of a conviction that is punishable by imprisonment for a period of more than a year? See U.S.C. Sec. 922(g)

911 F.2d 219; U.S. v. Gomez 9th Cir 1990.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceeding were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this Chapter, unless such pardon, expungement, or restoration of Civil rights expressly provides that the person may not ship, transport, possess or receive firearms. 18 U.S.C. Sec 921(a)(20)

Your Honor, Prior to July 1st 1991 Idaho did not restrict fire arms from an ex felon, and Idaho restored Civil rights, thus erasing evidence of convictions

Its plain to see that Idaho was
CC file To His Honor 7/21 000045 over please

8)

(unintentionally)

was wiping the slate clean as to the status of an ex-felon. The ex-felon need not apply for restoration of rights or firearms, the restoration was automatic, in Idaho

According to Congress which ^(makes) writes the law, Federal law, and Federal takes precedence over state law, Congress, by enacting and amending 921 in May 1986 it actually gave the states the power to say what constitutes a conviction. So according to Idaho law now, the only thing that can alter the fact of the historical event that a conviction exists is by reconstructing the wording of Idaho's statute § 18-310(2), in 1991

In U.S. v. Rame 961 F.2d 1003 (1st Cir 1992) page 1010, says; References in the legislative history show that Congress's intent in enacting § 921(a)(2) was to make it clear that states would henceforth have the ability to wipe the slate clean in

9)

respect to particular convictions by issuing pardons and by other similar individualized and affirmative procedures such as expungement or restoration of Rights, and the right to bear arms again.

Your Honor, because Idaho did restore my civil rights and did not restrict my firearm privileges, prior to 1991, those predicate felonies were automatically wiped clean from my historical fact of being a convicted felon, for any purpose.

When Gomez slipped through the cracks, with this loophole that the Idaho legislature had no intention (overlooked) of ever happening, he did, as well as all other convicted felons prior to the changing of the Idaho law of § 18-310 (2), which now makes it a crime to be in possession of a fire arm, after July 1st 1991, ~~thus~~ thus activating the historical permanent record.

When Idaho enacted this

CC file To His Honor 9/24

over please

Amendment to § 18-310 (5) it
 never changed the status of
 the ^(future) ex-felon. Prior to the enact-
 ment of this statute, the ex-felon
 had no status, because that's what
 Idaho was doing for its ex-felons.

As I've mentioned before, I'm more
 than positive that Idaho never had
 the intention of removing the high-
 erical fact of a conviction on an
 ex-felon, but it was doing just
 the very thing it never intended.

It's not my fault I didn't write
 the law, but I'm entitled to its
 benefits as anyone else. I know
 that I've been convicted 3 times
 prior to this conviction. But we
 both know that two prior convictions
 cannot be used, and those are the
 convictions that were prior to 7-1-90,
 the changing of the statute that
 was erasing my historical status
 as being an ex-felon. As the

11
9th Circuit held in Gomez, and
En; U.S. v. Dahms 938 F.2d 131, 9th Cir 1991
the argued, the indictment should have
been dismissed he was not a previously
convicted felon as defined in section
921(a)(20). we agree and reverse.
I know your Honor, that these
cases all apply to firearms, but
they all have to do with the status
of the ex-felony, which Congress has
ruled, that it, there is no prior
conviction there is no crime, and a
Citizen given back his civil rights
and has right to bear arms then
its obvious that he cannot have
ever been convicted of a crime that
is pure shade for more than a year
or else that would frustrate the
intent Congress had in mind when
it enacted 921(a)(20).
Your Honor, Congress would never have
intended to give an ex-felony the
right to bear arms, then turn right
C.C. file to His Honor 11/21
000049 over please

12)

around and charge him with being in persistent violator status upon his conviction of a crime, with a hand gun that 921 (a) (20) said he could have because he had his slate cleaned, his prior status erased by the State in which the proceedings were held, according to Gamez; and countless other case law.

Expungement does not do away with the historical fact of a conviction, as does positive or affirmative action does, Dickerson v. New Banner 1983

Gamez ruling said;

Because Idaho has no such express provision in its code, we must overturn Gamez's conviction. Idaho restored Gamez's civil rights without expressly restricting his right to possess firearms. We cannot say at the time of his arrest he stood "convicted" of a crime punishable by imprisonment for a term exceeding one year within the meaning of

Section 922(g).

Now Honor Sir, the bottom line
here is that Congress gave the States
the ability to clear up an ex felon's
status as to his convictions, as seen

In, U.S. v. Cassidy, 899 F.2d 543, 6th Cir 1990
page 548; Id. at 18. This explanation
reinforces our conclusion that a primary concern
of Congress was that "convicted felon" ~~status~~
be determined with reference to state law.

The last sentence of the quoted language
from the Judiciary Committee report suggests that
legislators had in mind the simple example

where an ex-convict is handed a pardon or ex-
punction order by a state official. It would
frustrate the intent of Congress, however, to
focus solely upon the document transferred
to the convict upon release. The intent of

Congress was to give affect to state reforms
with respect to the status of an ex-convict.
A narrow interpretation requiring that we look
only to the document, if any, evidencing a res-

C.C. file to His Honor 12/31

over please

teration of rights, would frustrate the intent of Congress that we look to the whole state law, including state law concerning a convicted felon's firearm privileges. The last sentence from the above quote from page 12 of Senate Report 97-476 suggest that Congress did not intend that a "convicted felon" be restored to federal firearms privileges if the restoration was "based upon considerations not relating to the fitness to own a firearm." See *Id.*, at 12

~~Senator Durenberger~~, recognizing, after the passage of FOPA but before its effective date, that federal firearms disabilities depended upon state law, urged delaying the effective date of FOPA in order to allow states to reexamine their civil rights restoration laws and state statutes regulating possession of firearms by convicted felons. 132 Cong. Rec. S 14, 974 (daily ed. October 3, 1986). He stated that [i]n the state of Minnesota, a convicted felon's civil rights are automatically restored when his sentence expires. Therefore, under the new federal law, it will no longer be a violation of the Federal Gun Control Act

of 1968 for a Minnesota convicted of a felony to possess a firearm after his sentence has expired. The same will be (Idaho)

true in each state which automatically restores

a convicted felon's civil rights. This creates a

problem in my state. The issue, unintended

side effect of this glitch in the gun law is

to turn a law intended to crack down on crime

into a law that could abet crime unless Minn-

nesota changes its laws regarding civil rights to

felons... I believe it is appropriate for all

of the States to review, and possibly revise,

their laws governing possession of firearms as

pecially those state statutes regulating possession

of firearms by convicted felons. Id. See

Dunberger's statement accurately portrays

the effect of FOPA's defunctance to state

law with respect to the federal firearms privileges

of persons convicted in that state.

So you see your Honor my argument

of how Idaho in effect barred itself

to prosecute convicted felons for prior

convictions prior to 1991 because the

laws of Idaho automatically restored

cc. file To His Honor 15/21 000053 over please

(6)

an exfelon's civil rights and didn't restrict his firearms ownership, thus it never frustrated Congress' intent to keep firearms out of the hands of people who could not be trusted, because Idaho was wiping the slate clean.

According^(to) the statute, 18-310 (2) ^{Prior to 7-1-91} as read in Promer, Idaho restored his (our) civil rights and firearm privileges because it was unintentionally erasing his (our) convictions, thus wiping away the historical fact of any conviction.

To your Honor, you should dismiss the state's alleged prior status claim to invoke -19-2514 because according to state law I only have one qualifying conviction, and that was the one in 1994, in Cassia County, ^{after 7-1-91}

As I mentioned earlier, I'm more than convinced beyond any shadow of a doubt that Idaho never intended to unintentionally erase the historical fact as to the status of the exfelon.

17)

when Congress enacted 921 (a) (2).
Idaho did not heed the advise of
Senator Durenburger's statement to
review their current gun laws. Idaho
was ignorant of the broad effects
it was granting to the ex-felon status.
But ignorance is not a defence.
The damage is done and Idaho
must contend with allowing a very
small number to fall through the
cracks of its ignorance, (me included)

I can boldly state to you your
Honor, that if the tables were
turned, Idaho would not give me
the benefit of the doubt and pat
me on the head and say, "its ok
Mr Herrera you didn't know so thats
o.k., your free to go."

Believe me your Honor, ignorance
of the law is whats gotten me in the
current state in which I find myself
today. I hope you don't believe that
if I knew the law I'd have let
GG file to His Honor 17/21

000055

over please

18)

Some of the things that transpired in my case that Kent Jensen allowed and never objected to or ever informed me of what was taking place. Had I known the law this would not have happened.

Your Honor I'm sure that I've taken up way to much of your valuable time, so I will close this letter to you.

Thank you Sir your Honor for taking this time to read my letter. I'm not an authority on law but Idaho schools in Burley did teach me to read. I can't write worth a lick and I'm sorry for that. I don't have access to a typewriter.

Please consider my argument Sir.

I want you to know that I've never in my life ever intended nor do I ever contemplate harm

19)

to anyone in law enforcement, "Nobody"

I've always taken my licks
in court and I don't repay evil
for evil.

I'm not upset with anyone. I
simply only want what's fair. I think
the state took advantage of my
clouded state of mind and ignorance
of the law to their advantage and
got an unfair conviction.

I believe that you could have
done things a little differently.
I'm not asking that you give me
the advantage over the state, just
the same fairness I'm entitled to.

I don't believe it's legal to amend
my charge the way you allowed the
state to do this.

I don't believe it legal for you
to allow into evidence, duties
Circ. file To His Honor 1/24 000057 over please

20)

12-18-06
of a bailiff, that you ruled on in
favor of the state, written by the
very hand of Alan Garrett himself.
The Victim

I don't believe it's legal for you
to allow the state to bring in exhibits
if and be that you already ruled they
could not.

And I don't believe it's legal
or ever fair for that matter to
be personal friends with the victim
in this case, Alan Garrett.

I don't believe it's legal for
you to have taken out the unlawful
touching, in the Battery statute.

I don't believe it's legal for
you to not mention a lesser included
offense, to the jury.

But that's just my opinion. Yours the
Judge and what you say Goes. God bless
you your Honor, in all that you do. Sincerely
V. Herrert

Certificate of mailing.

On this 5th day of May 2008
I hereby Certify that I caused a true
and correct copy of this letter of:

cc file to His Honor 1/21

Via the M.C.J.C. mail system for processing
to the United States mail system, addressed
to the following parties: on this 5th day of May 2008

The Clerk of the Court c/o
The Honorable John Melanson
Minidoka County Courthouse
Rupert Idaho 83350

Mike Tribe
Attorney at Law
P.O. Box 396
Rupert Id 83350

Clerk of the Court, (District)
Cassia County Courthouse, 1459 Overland
Burley Id. 83318

Valentino Herrera

Valentino Herrera
1415 Albion
Burley Id. 83318

5-5-08

cc file to His Honor 2/21

CASE NO: CR-06357

MAJESTIC COURT
CLERK COUNTY ID

FILED

20 MAY 12 PM 39

CLERK COUNTY ID

MAY 9 2003

Dear Clerk of the District Court:

Enclosed! Please find a copy of my letter
to His Honor Judge John Melanson: C.C. file,
for the record. -

for filing in this court, under Case No. -
CR-06-3507 *ID for purposes of
my record to the Court of Appeals and
or the Supreme Court of Idaho.

If possible please provide the prosecutors
office with a copy, as I am short
of funds.

Please take notice of my Certificate of
mailing.

As always, you have my sincerest thanks.

Sincerely,

Valerie
Henderson

000000

Case No. CR 2000-3507 * D

Dear Mr. Johnson

Aug 9th 1908

I spoke with my court appointed counsel, Mike Tribe. He has informed me that you have pointed to the fact that the case has been submitted to the Court for consideration on a future ruling as to the persistent violator (Status) is based solely on firearm case law violations.

"This is a true statement. The cases we've been submitting is primarily on cases that deal with fire arm violations, yet, also, all the cases we submitting deal with the Status As defined by Our United States Congress in it's enactment of F.O.P.A., effective date November 15th 1976. F.O.P.A. Also defines the phrase 'crime can include any Department for a term exceeding one year'."

See 18 USC Sec 721a. Your Honor, in
order for the state of Idaho not to frustrate Congress
then the state of Idaho is not to frustrate Congress
is not to frustrate Congress is not to frustrate Congress
then the state of Idaho is not to frustrate Congress is to the

1980-1981, 1982-1983 (2), and

Record of the Commission of
1984 (2), of 1984 by the U.S.C.
What was not (Status) as to the
Congress and giving to resolution
to federal agencies prior to date of
1981-1982 (2) makes it clear, Congress

Said, no guns for anyone with a conviction on extent
Hickman Stems. In not a conviction on extent

I claim to be. But the case law 8m
Submitting on 921 (200) make it clear
that Congress dead set on keeping
firearms out of the hands of those
who must be treated as we see in;

THIS IS SILENTLY V. WHITE STATE 5, 1980

... a Challenge to the gun ban in
an appropriate court process as a result
that Congress intended that a defendant
clear his (Status) before obtaining a
license to keep firearms in his home
and as a result of this, the
court, the and defense in P. 100 155

at the for the record page 100

... the fact of a felony conviction imposes a disability until the right is vacated or the felon is relieved of the disability by some affirmative action.

As we read further; -- the legislative history of Title VIII is the entire basis for the law is the purpose of the law is to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society! Searchers v. United States 431 U.S. At 572

As we read further; Again, it is important to note that a convicted felon may challenge the validity of a prior conviction, or otherwise remove disability before obtaining a firearm.

1984, 12/200 ... about the ...

Lewis supra
(even a mere indictment)

Anyone with any kind of a conviction on his historical (Status) to ever be able to own a firearm. Any one According to Congress with a prior conviction cannot have a gun because that individual has demonstrated (He) cannot be trusted.

Your Honor, let the record reflect that I'm arguing that I da ho, prior to July 1st 1991 erased my prior convictions, and allowed me to be in compliance with the law handed down in (1986) by Congress, As read in Lewis Supra we see because I da ho Affirmatively removed my convictions, prior to the change of Federal, 18-310 (a), on July 1st 1991. because I da ho I have guaranteed the Congress of the United States that I was never in possession of a firearm and in compliance with what we have today as 18-310 (a). thus there is no need for any other purpose and present of (18-310 (a))

cc. file for the record page four

your favor, I know that I must
demonstrate further to this
Honorable Court that F.D.A. did
in fact wipe my convictions from
the historical facts as to my (Status)
on or before July 1st 1991.

Let's look at;

465 U.S. 123; Dickerson V. New Banner Inst. Inc. 1983

Title IV of the Gun Control Act of 1968,
18 U.S.C. §§ 922(g)(1) and (h)(1), makes
it unlawful for any person who has been
convicted... of... a crime punishable
by imprisonment for a term exceeding
one year" to ship, transport, or receive
any firearm or ammunition in interstate commerce.

As we read further;
only persons who knows that a gun is
being, see 21 CFR § 178.142 (1990), or
a letter from the Secretary of the Army
would qualify to receive the gun. 465
U.S. at 104-105 (1983).
The Court in Dickerson held that the
government's argument that the law was

and file for the record. The file

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not alter the historical fact of the conviction, And does not open the way to a license despite the conviction. AS does positive or Affirmative action" ibid.

As we read further
In short, the circumstances [460 U.S. 121] surrounding the expunction provide little, if any, assurance that Kennison is a person who can be trusted with a dangerous weapon. . . .

Congress used unambiguous language in attaching gun control disabilities to "any person" who has been convicted" of a federal offense. We give full effect to that language.

Your Honor, If expunction doesn't alter the historical fact then what does? Restoration of civil right and not restricting firearm privileges Alters the historical fact enacted by Congress in 1948 and thus erases the conviction from Idaho's public historical status

cc: file for the record page 5
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Your Honor, I understand that you are not in agreement with my argument yet.

Your Honor at this time I would like to point out that I believe that the State of Idaho is trying to do what Dickerson v. New Banner was doing to the states. It was saying it could use convictions that the states had made, and using them to prosecute defendants federally. Now Idaho is turning the tables and prosecuting defendants with prior convictions that Federal law, and Congress defined under 921(a)(20) no longer exist by restoring civil rights, and by neither restricting the right to ship, transport, possess, or receive a firearm, before the changing of the law in Idaho on July 1st 1971.

Your Honor just this quick quote by:
United States v. Sherbondy, 265 F.2d 196 9th Cir. 1958

cc file, for the record page seven
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(Congress enacted section 921(a)(20) for a specific purpose. Under prior case law, federal courts were allowed to use a conviction which a state had officially expunged as a predicate for a felon-with-a-gun charge. See, e.g., Dickerson v. New Banner Inst, Inc., 460 U.S. 103 (1983). The unfairness of this procedure was aptly summarized by Judge Kozinski: "[T]he policies of the two governments are at loggerheads. The state wishes to give the defendant a clean slate, yet federal law makes the record indelible." More over defendants whose convictions were erased under state law had every reason to believe that the state had been wiped clean, and no reason to expect the expunged convictions to reappear in a later federal proceeding.

So your Honor, I will ask the Court this again, if according to federal law handed down by Congress and created by Congress itself saying what constitutes a felony in order to comply with

921(a)(2) in 1981 that says I don't
have a conviction, then how can the
State of Idaho say that I do?

Well, I think it should be
mentioned that Idaho did not change
§ 18-310(2) to only keep firearms
out of the hands of convicted felons.
Idaho changed § 18-310(2) because in
the States insurance, it was unintentionally
erasing the historical fact as to its
convicted felons and to their (status)
of ever being convicted felons, thus
barring prosecution from other status
as well, such as being in persistent
violator (status). Therefore I have no prior
felony convictions on record to make
Persistent violator (status). Before
the changing of the State Statute
18-310(2) prior to July 1st 1971,
my particular prior convictions of burglary
in 1982, and 1983, and 1984, and 1985,
and 1986, and 1987, and 1988, and 1989,
my history of status records of felons

A.C. 10, in the record page are
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bread restriction of rights as seen in;

United States v. Gomez 911 F.2d 219 9th Cir. 1993

A

To determine whether a convicted felon civil rights have been restored within the meaning of section 921(a)(2) we look to the whole of state law. See id., 899 F.2d 454. In enacting section 921(a)(2), the intent of

Congress was to give effect to state reforms with respect to the (Status) of an ex-convict. A narrow interpretation requiring that we look only to the document, if any, evidencing a restoration of rights, would frustrate the intent of Congress. Id. at 549 (citing S. Rep. No. 97-474, 97th Cong., 3d Sess., 41, 12/19/82).

There need not be a full "restoration of rights. Classically, 899 F.2d at 549; Fresh v. United States, 851 F.2d 1052, (6th Cir. 1988). If Congress had intended a requirement of a complete restoration of all rights and privileges forfeited upon conviction, it could easily have done so. Congress chose not to impose such a requirement.

Like many other states, Idaho has a general pardon in its state laws restoring rights to convicted felons and has exempted that from its protection terms. Section 18-812(2) states that Idaho's law states that

Idaho's law states that a person convicted of a felony

12/07/08 12.0000

11-15-61

1945: 10/10/45

[N] · (FPPV) \rightarrow [N]

freedom, a person shall be restored the full rights of citizenship. As used in this subsection, final discharge means satisfaction of a person's debt of imprisonment and parole as the case may be. [FN1] (emphasis added).

The following are the points to be noted in

accept the government's suggestion that the federal state only recognized

recognition by virtue of affirmative act. It is not enough, the government

argues, that the state made certain provisions in which rights to discharged

felons. [F.N.] The federal statute, however, does not make such a requirement.

The statute plainly states that "[A]ny conviction ... for which a person ...

has had civil rights restored shall not be considered a conviction ...

unless restoration of civil rights expressly provides that the person may not

ship, passport, possess or receive firearms." 18 U.S.C. Sec 9224(b).

If Congress in fact had the require in individual affirmative act of restor-

ation by the state, Congress would have so provided. We are not after the

text. "When Congress has manifestly intended its intention, we may not

manufacture ambiguity in order to beat that intent." Robledo V. United

States 417 U.S. 351, 1980.

No other statute expressly provides that it enacted that

may not ship, passport, possess or receive firearms. 18 U.S.C. Sec 9224(b)

It does not. There was simply convicted under the act and not

not stating his restoration of civil rights. 9/29/81

at 550. We are not saying that the person is restoring the conviction

felony right to ship, passport, possess or receive firearms must be

expressed. A state must leave the labor for it. I think that is correct and with

United States v. ...

the ...

to ...

re. file, for the record case twelve
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Your Honor, I have just brought 10 more cases
to suggest you look at, please remember that
these cases not only refer to firearms violations, but that
All deal with the (Status) of the ex felon and his felony
conviction historical fact of having ever been convicted.
Please also keep in mind that Congress never intended to
let nor does it now intend to let anyone have a firearm
who has a precipitate felony within the meaning of 92(a)(2)(B).

United States v. Rums 961 F.2d 1003, 1st Cir. 1992

We read the plain language of §§ 92(a)(2)(B) and 922(a) as well as the
legislative history, to prohibit and punish firearm possession by persons
formerly convicted of serious crimes, subject to a narrow exemption for
convicted persons whom a state has later taken affirmative measures to
release from the significant consequences of having been convicted. The
exemption by its terms applies solely to persons who following conviction
have been pardoned, or had their crime expunged or set aside, or who have
had their civil rights restored. Exempted persons include, but are not limited
to, persons whom a state has later chosen to release from
all or some of the consequences of conviction, including those that
prohibit or restrict their carrying, possessing, or receiving firearms and
ammunition. The exemption does not extend to persons who have been
pardoned or whose convictions have been set aside, but who have not
been formally pardoned or whose convictions have not been set aside.

C.P. Cole for the record page 10/1/92
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restoration of civil rights is a process that the person may not
be transparently passing or receive from the courts and courts for
the purposes of § 372(g)

Our above reading compares with the plain words of the statute, which
refers to making a person an "equal" member of the civil rights

restored. The word "restore" means "to give back" is something
lost or taken away. The point is not just that civil rights were
never lost, but that following conviction, such right were affirmatively

restored.

This reading is also consistent with the idea of construction
giving a domain meaning to broadly grouped terms, there, the phrase
"a conviction... for which a person... has had civil rights

restored" is joined with three other actions - a pardon, the
set-aside of a conviction, and the expungement of a conviction
-- which all require the taking of some affirmative step following

a conviction. It is reasonable, in this context, to read "a conviction
for which a person... has had civil rights restored" to mean an
analogous affirmative step to restore what the conviction

originally took away.

Your Honor, as follows, did not have to say for
affirmative action in 372(g) the person was
affirmative. I would like to see this. 372(g)

affirmative for the record page for free

Title 18 U.S.C. § 921(a) out qualifies the definition of "conviction": "What constitutes a conviction [is] determined in accordance with the law of the jurisdiction in which the proceedings were held" ibid. (Phrase of law), and any conviction which has been expunged, or set aside, or for which a person has been pardoned, or has had civil rights restored shall not be considered a conviction ... ibid. (exemption clause)

So there you have it your Honor. Congress made it clear, no guns for any one with a conviction on his status. Before my conviction in 96, according to Idaho law I was eligible to have a gun because Idaho restored my civil rights and didn't restrict my right to receive fire arms, because Idaho wiped my slate clean. I didn't have a qualifying conviction against me until 1996. For all these reasons above, I'm asking this Honorable court to allow me to withdraw my stipulation and to dismiss the charge of Persistent Violator in my case.

Sincerely;

Walter H. Herring

C.B. file, for the record page 31242

Certificate of Mailing

I hereby certify that on the 9th day ~~may~~ of 2008,
I caused a true and correct copy of this:

Letter to Judge John Melanson, for the record.

VIA the M.E.S.C. mail system for processing to
the United States mail system Address to the
following parties:

Clerk of the District Court c/o
The Honorable John Melanson
Minnesota County Courthouse
Rupert, Id. 83350

Mike Tribe
Attorney At Law
PO Box 395
Rupert Id 83350

Clerk of the District Court
CASSIA County Courthouse
1459 Overland Avenue
Burley Id. 83318

Valentino Herrera
Valentino Herrera
1415 Albion
Burley Id 83318
5-9-8

cc. file for the record Page 3 of 4
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FILED

2022 MAY 12 P 4:39

WATSON, JAMES L

10000000000000000000

1. Please advise that I have:

Understand, I have had a copy of my letter
to the court of appeals:

CC CR-06-3507 *D

for filing in this copy, under case NO. -
CR 06-3507 *D for purposes of
my record to the Court of Appeals
of the Supreme Court of Idaho.

If you can please provide the court
with a copy of the court
of funds

Please let me know if you have any
other questions.

As always, thank you for your assistance.

Respectfully,

James L. Watson
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Case CR-06-3507 - * D

Mr.

May 11/2007

There is a temporary order against you for this matter. The state, and you are the answer who give us that at the time.

How would Congress react to a state that would legally give a firearm to a person who could be potentially subject to being prosecuted as a recidivist, or as termed in Idaho, a persistent violator, for shooting a body with the same firearm that the state assured Congress he was legally entitled to own according to the wording of U.S.C. 12(a)(20) and the enactments of Congress' F.O.P.A., 1984 and Gun Control Act in 1968 as a whole.

Congress has made it crystal clear, in case after case that we need. If you have an extent good ole American society the need to protect a person who is past or present threat to society you are not doing a threat to society. We are not allowed to do so.

CR-06-3507 * D - / 000073

A four arm. nothing! right! no-way-lose

How do you think Congress would have reacted if they gave me the ok. to have a firearm, then told me to shoot and charge me as a pure street thug for if I turned around and misused it by shooting somebody?

If I was a congress member my first initial reaction would be to ask;

1. what was a former convicted criminal doing with a legally owned fire arm in his possession.
 2. Didnt ^(we) Congress pass laws that would prevent this very thing from happening?
 3. If this man could be presented as a politician that would require for him to have extant proof of the previous actions, what was he doing with a gun in the back place, when we said he couldnt have any, especially if he was going to be allowed to have a gun.
000000
- 12-02-4-3507 #15-2

Does a state really have it in the
 power to make laws on the basis of
 from members of the state of those

at the 1951-52-3 000081

6 Will in so reacting this law didn't we make
 it crystal clear that a state may give a
 convicted felon his right to once again be
 in possession of a firearm as long as he
 had cleared his status of ever having been
 convicted of a state creditable prior conviction
 mentioned on his historical status in these
 United States by some positive or affirmative
 action nullifying the bond of those
 convictions?

5. Sent 91 here that we controlled Dickerson.
 New Banner Inst, Inc, 1983, in 1986 by
 enacting Amended USC 921(a)(3) giving
 power to the states that they could define
 what constitutes a felony conviction?

4. That is the only way to make sure
 that made it perfectly clear no more
 for those with a state creditable
 felony conviction on their historical status?

8 for sure that we have sought so diligently
to keep guns away from?

So Mike when you and the Boys are done answering
those questions take another look at Gomez v. US, 911
F.2d 219 1990, because it says, No Idaho would never
frustrate Congress. Of course Idaho would never place
a gun, legally in the hands of a extent predicate
felon. Because Idaho was unintentionally wiping the
slate clean to many if not almost every convicted
felon prior to July 1st 1991, by positively and
affirmatively restoring our civil rights and
not restricting firearms specifically to those
felons that completed full term prison sentences or
completion of satisfactory parole or probation
terms, If Idaho was unaware of what it was
allowing, what makes you or the judge or the
state for that matter think the ex-felon knew?
We didn't, not until Gomez. Idaho changed the
statute 18-310(2) not only to restrict firearms but
to stop the erasing of its convicted ex-felons of
their historical status. But it was too late to
stop them from positively erasing my two felonies
in 82 and 86. You know the right. Well see
you soon.

1. The first step is to identify the
the following information is required
for the processing of the data

2. The second step is to identify the processing
the data is to be used for the
following purposes:

- | | |
|-------------------------|--------------------------|
| 1. Data processing | 2. Data storage |
| 3. Data retrieval | 4. Data analysis |
| 5. Data distribution | 6. Data security |
| 7. Data backup | 8. Data recovery |
| 9. Data archiving | 10. Data migration |
| 11. Data deletion | 12. Data restoration |
| 13. Data compression | 14. Data decompression |
| 15. Data encryption | 16. Data decryption |
| 17. Data authentication | 18. Data authorization |
| 19. Data integrity | 20. Data confidentiality |

CLERK OF DISTRICT COURT
CASSIA COUNTY ID

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2008 MAY 16 PM 4:55

LARRY A. MICKELSEN

BY lg

Michael P. Tribe, Esq.
ROBINSON & ASSOCIATES
Attorneys at Law
P.O. Box 396
Rupert, Idaho 83350-0396
Telephone: (208) 436-4717
Facsimile: (208) 436-6804
ISB No. 6816

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Case No. CR-2006-3507

Plaintiff,

vs.

MEMORANDUM IN SUPPORT
OF PRO SE MOTIONS

VALENTINO ALEX HERRERA,

Defendant.

COMES NOW the defendant, Valentino Alex Herrera (hereinafter "Herrera"), by and through his attorney of record, Michael P. Tribe of the firm Robinson & Associates, and files this *Memorandum in Support* as follows:

I. Introduction

On or about December 21st, 2007, Herrera filed several pro se motions, which included Motion for New Trial, Motion Striking of the Presentence Addendum, Striking of Psychological Examination and Petition for New Examination, Motion to Strike Persistent Violator Charge, Motion for Appointment of New Counsel, Motion to Withdraw Guilty Plea, Motion for Bail Pending Appeal. Contemporaneous with said motions, Herrera filed an Affidavit of Motion for New Trial and Appointment of New counsel, etc. In addition, Herrera has filed additional letters and

MEMORANDUM IN SUPPORT - 1 -

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ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

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RUPERT, IDAHO 83350-0396

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3 memorandums for the Court's consideration and by reference each of those documents should be
4 considered by this Court.

5 On March 16, 2008, an order was issued appointing current counsel and at that time the
6 above-mentioned motions were pending. As requested by the Court, this memorandum is
7 designed to complement those documents already filed by Herrera and to provide additional
8 legal authority for Herrera's position.

9
10 **II. Motion for New Trial**

11 The motion for new trial is filed in the interests on justice and based upon the following:

12 **a. Court Failed to Rule on Motion to Disqualify Before it Ruled on Other
Motions**

13 Pursuant to Idaho Criminal Rule 25(e) upon the filing of a "motion for disqualification,
14 the presiding judge shall be without authority to act further in such action except to grant or
15 deny such motion for disqualification or to act as provided in subparagraph (a)(11) of this Rule."

16 In this case, on the morning of the trial, the Court was presented with a motion to
17 dismiss and a motion to disqualify by Herrera. Trial Transcript, p. 23, ll 17-20. The Court dealt
18 with the motion to dismiss first. Id. p. 28, ll 18-19. The Court then denied the Motion to
19 Dismiss. Id. p. 30, ll 1-3. The Court then ruled on the Motion to Disqualify in violation of
20 Rule 25(c).

21 There were no factors that would permit the Court to do this as enumerated in Rule
22 25(a)(11). Because of this violation of Idaho Criminal Rule 25(e), the Court was without
23 authority to Rule on the Motion to Dismiss and the matter should be reheard following the
24 proper procedures laid out in the Idaho Criminal Rules.

25 **b. Ineffective Assistance of Counsel**

26 The claim of ineffective assistance of counsel by Herrera includes the following issues
27 and concerns.

28 MEMORANDUM IN SUPPORT. - 2 -

000085

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3 **1. Failure to Advise Court and Herrera of Lack of Speedy**
4 **Trial Issue**

5 At the Hearing on the Motion to Dismiss and on the morning of the trial there were
6 several mentions that there were speedy trial issues. The State raised the issue on page 27 of the
7 trial transcript and the Court raised the issue during the hearing on the Motion to Dismiss. At page
8 20 of the Transcript of Appeal the Court looks for the original information to determine if the
9 speedy trial requirements are being complied with. "I don't know how much room we've got to
10 change [the trial date] without a waiver of speedy trial." Transcript of Appeal, pg. 20, ll 16-21.
11 Herrera's counsel was concerned with another trial that may have interfered with his preparation on
12 Herrera's case, which led his counsel to not properly inform Herrera of his options as far as the jury
13 trial. This could have been remedied by a review of Idaho Criminal Rule 25(a)(10), which states
14 that if a defendant disqualifies a judge or magistrate under this Rule, the time which the defendant
15 must be given a speedy trial or trial pursuant to I.C. § 19-3501 shall commence to run anew on the
16 date of such qualification. Pursuant to the record of activity, the prior judge in this case,
17 disqualified himself on October 24, 2006. The voluntary disqualification of a judge also starts the
18 time for a speedy trial anew.

19 Therefore, Herrera's counsel or the Court should have recognized such rule and raised the
20 issue to prevent any party from not being prepared on the day of trial and to reset the trial. Such
21 failure was reversible error and should require the grant of a new trial.

22 **2. Failure to Advise Herrera to Consequences of Stipulating to**
23 **Persistent Violator Charge Rather than Entering Plea**

24 After the jury convicted Herrera of the battery on an officer, the Court then moved to the
25 second phase regarding the persistent violator charge. Herrera was advised by his counsel to
26 stipulate to the that charge thus relieving the State of its duty to prove the existent of past
27 felonies.

28 MEMORANDUM IN SUPPORT - 3 -

000086

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Herrera states that he was not properly informed of his right to present evidence of his past felony record or the consequences of stipulating to it. At page 217 of the trial transcript, Herrera's counsel stated: "Your Honor, as far as that goes, we're willing to -- we're not going to go forward with that. I guess will stipulate to that." Documents were then admitted as Exhibits 7-9 that apparently established Herrera's past felonies.

As the Court is well aware, a stipulated agreement is different from a voluntary plea taken knowingly and willingly on the advise of council. Both Counsel and/or the Court should have not allowed a stipulation on such an important issue, rather it should have, outside of the presence of the jury, allowed Herrera to plea to the persistent violator charge only after explaining to Herrera what rights he was waiving and asked if such rights had been explained to him by his attorney.

Herrera respectfully requests a new trial so he could contest the persistent violator charge and make a knowing decision as to presenting a defense on the persistent violator charge.

3. Failure to Object to Admission of Exhibits

Furthermore, counsel for Herrera failed to object to certain exhibits at the trial, Specifically Exhibit Numbers 4 & 6. During the trial, Herrera tried to object to the offer of Exhibit No. 4. Trial Transcript p. 165, ll 4-11. Herrera tried to object on his own, but was denied by the Court. Exhibit 4 was an affidavit in support of a criminal complaint signed by the victim in the case. Exhibit 6 was the criminal complaint also with the victim's name on it. After Herrera tried to object, his attorney stated; "Your Honor, I guess no objection." Trial Transcript p. 167, l. 12. He ignored his client's plea to object.

Exhibits 4 & 6 are crucial to Herrera's conviction because it reasonably led the jury to infer that any battery on the victim was due to his past status of a bailiff in Cassia County.

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Therefore, the failure of his attorney to object to the State's exhibits 4 and 6 was ineffective of counsel and reversible error requiring that Herrera be retried.

c. Failure to Object to Admission of Convictions Over Ten Years Old

During the Course of the Trial, the State admitted certain evidence of Herrera's convictions that were over ten years old. Idaho Rule of Evidence 609(b) prohibits evidence of convictions more than ten years old unless, "the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence."

Herrera never received written notice of the State's intent to use such evidence that would give him and his counsel fair opportunity to contest the use of such evidence. His counsel did not inform Herrera of such right. The prejudice to Herrera in this case is based on the fact that the jury was made aware of such past convictions and may have improperly convicted Herrera based on such impermissible evidence.

d. Failure to Add Lesser Included Jury Instruction

Idaho Code § 19-2132 gives Idaho Courts direction regarding jury instructions and instructions on lesser included offenses. "Because the language of I.C. § 19-2132 does not restrain a trial court from instructing on lesser included offenses in the absence of a request from either party" the Idaho Court of Appeals has held that district courts have authority to instruct the jury on lesser-included offenses even though neither party requested the instructions. Idaho "courts have inherent authority to instruct a jury on lesser included offenses, and such authority does not infringe upon the power of charging and prosecuting, which is reserved to the executive branch. Accordingly, the district court had authority to *sua sponte* instruct on lesser-included offenses

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provided the giving of such instructions was reasonable based on the evidence presented. *State v. Rae*, 139 Idaho 650, 653, 84 P.3d 586, 589 (Ct.App.2004).

In this case, the Court should have, upon the review of the evidence, provided an instruction to the Jury that it could consider the lesser-included crime of battery. The instructions should have stated that the jury could have found Herrera guilty only of a battery.

Whether a particular crime is a lesser-included offense of the crime charged involves a question of law over which this Court exercises free review. *State v. Tribe*, 123 Idaho 721, 726, 852 P.2d 87, 92 (1993); *State v. Curtis*, 130 Idaho 525, 527, 944 P.2d 122, 124 (Ct.App.1996). There are two theories by which an offense may be deemed a lesser included offense of a greater offense: (1) the statutory theory; and (2) the pleading theory. *State v. Curtis*, 130 Idaho 522, 524, 944 P.2d 119, 121 (1997). Under the statutory theory, a crime may be a lesser included offense if its elements are necessarily included in the greater crime, as the greater crime is defined by statute. Under the pleading theory, a crime may be a lesser included offense if the charging document alleges facts the proof of which necessarily includes proof of the elements of the lesser included offense. *Id.*

State v. Rae, 139 Idaho 650, 653, 84 P.3d 586, 589 (Ct.App.2004). The elements for battery on an officer (18-915(d)) include violating the provisions of 18-903. The elements of 18-903 include "willful and unlawful use of force or violence upon the person of another; or actual, intentional and unlawful touching or striking of another person against the will of the other; or unlawfully and intentionally causing harm to an individual." By definition, simple battery is a lesser-included offense to battery upon an officer, or in the case a former bailiff.

By either the statutory theory or the pleading theory, simple battery is a lesser-included offense to battery on an officer. Under the statutory theory the elements of simple battery are necessarily included in the greater crime, battery on an officer, as the greater crime is defined by statute and specifically cites to the battery statute, 18-903.

Under the pleading theory, simple battery is a crime that may be a lesser-included offense of the charged crime because the charging document, filed by the State, alleges facts the proof of

MEMORANDUM IN SUPPORT - 6 -

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3 which necessarily includes proof of the elements of the lesser-included offense. The Amended
4 Information for battery on an officer stated; "That the defendant VALENTINO ALEX HERRERA,
5 on or about the 4th day of June, 2006, in the County of Cassia, State of Idaho, did batter Alan
6 Garrett by striking Mr. Garrett's face."

7 Therefore, under either the statutory theory or the pleading theory, the Court should have
8 given a jury instruction that if the alleged battery occurred because of the alleged victim's status
9 as a former bailiff for Cassia County or if the alleged battery occurred because the defendant
10 and Herrera had a disagreement. Such opportunity should have been provided in the form of a
11 lesser included jury instruction.

12 In addition, Herrera states that Jury Instruction 13 should have tracked the statutory language
13 of 18-903 precisely. The instruction should have included the phrase "unlawful touching" so
14 Herrera could have more aggressively argued self-defense based on the evidence that the victim was
15 actually the aggressor and that Herrera was acting in self-defense. The lack of the unlawful
16 touching language allowed the State to argue that any possible chest bumping by the victim to
17 Herrera was not battery and not cause for Herrera to lawfully defend himself and realistically
18 claim self-defense.

19 **c. Reversible Error Committed By State in Closing Argument**

20
21 During closing argument, the State argued that if "the defendant has shown any
22 reasonable doubt it's your duty to convict, and that's what I'm asking you to do." Herrera
23 object and the Court denied the objection.

24 This comment impermissibly put the burden of reasonable doubt on Herrera and likely
25 caused significant prejudice to Herrera. It is a fundamental tenant of American Jurisprudence
26 that the State had the burden to prove a defendant's guilt beyond a reasonable doubt. The
27

28 MEMORANDUM IN SUPPORT - 7 -

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burden is not on the defendant. This comment, allowed by the Court, is reversible error and cause to retry the matter.

f. No Job Qualifications for Bailiff While Victim was Employed as Bailiff

The victim testified that he drafted the job descriptions for the position of Bailiff in Cassia County. The testimony at trial was that the victim was Cassia County's very first Bailiff and before that there was no description of the job or no job summary. Trial Transcript, p. 79, ll 11-25. Prior to that there were no job qualifications and the victim drafted the qualification for the incoming bailiff. *Id.*

The fact that no job qualifications existed is important because Herrera was charged with battery on an officer (18-915(d)) – more than simple battery. Because there was no official job qualifications, the victim should not be viewed as a protected person under the statute. He was not a peace officer, sheriff or police officer. The statute did not protect him and the Court should have considered this in Herrera's Motion to Dismiss.

g. Court Should Have Been Disqualified Pursuant to Idaho Criminal Rule 25(b)

Herrera maintains that the Court "was not forthcoming in facts [as]to the true nature of [the] relationship of [the] Court and [the] victim Alan Garrett." *Motion for New Trial*, p. 2. Because Alan Garrett was in fact friends with the Court, from his former employment with Cassia County, that the court was "interested" in the proceeding and was therefore biased or prejudiced against Herrera pursuant to Idaho Criminal Rule 25 (b)(1) & (4). Rule 25 reads:

Disqualification for cause. Any party to an action may disqualify a judge or magistrate from presiding in any action upon any of the following grounds:

(1) That the judge or magistrate is a party, or is interested, in the action or proceeding.

MEMORANDUM IN SUPPORT. - 8 -

000091

ROBINSON & ASSOCIATES

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

(2) That judge or magistrate is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law.

(3) That judge or magistrate has been attorney or counsel for any party in the action or proceeding.

(4) That judge or magistrate is biased or prejudiced for or against any party or that party's case in the action.

Whether a trial judge should grant a motion for disqualification is left to the sound discretion of the judge. *Sivak v. State*, 112 Idaho 197, 206, 731 P.2d 192, 201 (1987).

Herrera asserts that the Court should have rescued itself because of its relationship with the victim. Pursuant to the transcript from the Motion to Dismiss, the victim served for many years as a bailiff in Cassia County. Transcript on Appeal, Motion to Dismiss, p. 7. During the initial stages of the trial, there was a Motion to Disqualify the Court/Judge based on a personal relationship. The alleged victim stated at trial that he didn't want to testify at Herrera's trial because: "It's embarrassing to me. I mean, I'd been sitting over there in that...chair for 13 years and these people I know personally. They're all my friends." Transcript on Appeal, p. 82 ll 15-18. This statement makes it clear that the victim was friends with all the court staff in Cassia County, which by definition includes the Court itself. The Court then states that, "I don't remember the victim in this case --- the alleged victim. Surely I've met him because I hear cases here occasionally. The bailiffs that I recall here in Cassia County are Shawn...and spot." Trial Transcript p. 30 ll 6-10. The disagreement between the victim's statements and the Court should have been enough to investigate the issue further or for the Court to make a voluntary decision to disqualify itself.

Based upon that statement and the fact that the Court has had interactions with the alleged victim in the past, the Court should have reused itself. Furthermore, a new trial should be held to provide the opportunity to Herrera to examine the victim more fully as to his relationship with the Court.

MEMORANDUM IN SUPPORT. - 9 -

000092

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ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

h. Motion to Strike or Suppress Psychological Examination

The Psychological Examination of the Herrera should be stricken because the exam was made by Dr. Richard V. Smith, who was an associate of the victim in this case. By implication, the PSI report, which relied on the Exam, should also be stricken.

As stated in the Affidavit of Valentino A. Herrera, attached below as Exhibit "A" to this Memorandum in Support. In summary, Herrera states that Dr. Richard V. Smith, the psychologist who prepared the psychological evaluation for the PSI, stated to the Herrera that Dr. Smith informed him that the victim and he are friends. Dr. Smith also informed Herrera that their friendship stems from the victims job, which included transporting inmates to be evaluated by Dr. Smith.

Because of this friendship, Dr. Smith could not give an impartial report of Herrera who had been convicted of battering the victim. Because Matilda Ortega, P.S.I. investigator officer relied heavily upon the majority of Dr. Smith's report it should also be rejected. Herrera should be given the opportunity to be interviewed by a neutral psychologist who could then provide a new PSI investigator with an unbiased report.

Herrera also states that the psychologist examination report should be set aside because under the Sixth Amendment, a criminal defendant is guaranteed the right to counsel during all critical stages of the adversarial process. That cannot be debated. In addition, a defendant's right to effective assistance of counsel extends to all critical stages of the prosecution where their substantive rights may be affected and sentencing is one such stage. Therefore, it makes no sense that a defendant would be entitled to counsel up and through conviction or entry of plea of guilty and through sentencing, yet be would be denied the advice of counsel in the interim period regarding a psychological evaluation and examination.

Instructive is the analysis in *Estelle v. Smith*, 451 U.S. 454 (1981). In *Estelle*, the United States Supreme Court ruled that a defendant's pretrial psychiatric evaluation was a critical stage of the proceedings. *Id.* at 470. The Court stated that the defendant had a sixth amendment right to the

MEMORANDUM IN SUPPORT - 10 -

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RUPERT, IDAHO 83350-0396

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3 assistance of counsel before the submitting to an interview, observing that "it is central to [the Sixth
4 Amendment] principle that in addition to Counsel's presence at trial, the accused is guaranteed that
5 he need not stand alone against the State...formal or informal, in Court or out, where counsel's
6 absence might derogate from the accused's right to a fair trial. *Id.* at 470-71.

7 Herrera therefore, believes that his psychologists examination should be suppressed because
8 he did not have effective counsel in determining whether he should have even had the interview or
9 have the opportunity to discuss it with his counsel.

10 11 III. Motion to Strike Persistent Violator Charge

12 Where a defendant is charged with being a persistent violator under Idaho Code §
13 19-2514, the proceeding must be bifurcated, with the former convictions separated in the
14 information and not read to the jury unless the defendant is convicted on the pending charge; in that
15 event the jury should be read the charges concerning the former conviction and proceed to try these
16 charges without being resworn. *State v. Johnson*, 86 Idaho 51, 383 P.2d 326 (1963). Idaho's
17 persistent violator statute, I.C. § 19-2514, does not create a new or separate offense, rather it makes
18 possible an enhancement of punishment for a particular crime when one has previously been
19 convicted of two felonies. Thus, when a twice-convicted felon is convicted of a third felony he
20 assumes a status, which renders him susceptible to more severe punishment for the offense charged.
21 *State v. Dunn*, 91 Idaho 870, 434 P.2d 88 (1967); *State v. Salazar*, 95 Idaho 650, 651, 516 P.2d
22 707, 708 (1973).

23 The Idaho Court of Appeals construing Idaho law has stated:

24 [T]he detriment from being found a persistent violator is dramatic.
25 Idaho Code § 19-2514 mandates that a persistent violator be
26 sentenced to not less than five years imprisonment and authorizes up
27 to life imprisonment, regardless of the maximum sentence otherwise
28 fixed by statute for the new offense. The defendant may be subject to
a sentence "many times as great as that prescribed by statute for the
offense." *Citations omitted.* A waiver of the right to trial on a

28 MEMORANDUM IN SUPPORT - 11 -

000094

ROBINSON & ASSOCIATES

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RUPERT, IDAHO 83350-0396

recidivist charge therefore ought not be treated lightly. *State v. Cheatham*, 139 Idaho 413, 418, 80 P.3d 349, 354 (Ct.App.2003).

As presented in his *Memorandum of Law and Correction*, filed with the Court on January 4, 2008, Herrera vehemently opposes the court's implementation and use of the persistent violator statute. Herrera argues:

The State claims one of the prior convictions to be "Aggravated Driving While under the Influence" which occurred on November 21, 1988. For which defendant received 3 yrs. With 1 yr. fixed. This charge was dismissed on May 17, 1992.

This charge was use[ed] as one of the three charges used to invoke I.C. 19-2514 in this case.

This would not have happened if defendant had had the chance to build a defense to the allegation.

This is because the prior conviction should have been dismissed.

Because in 1988 (the year the defendant was convicted), Idaho code § 18-310 automatically restored a convicted felons civil rights (18-310(2)) upon "final discharge" of his term of imprisonment.

Even though today the laws have changed. In those days the X-Felon need not take any affirmative actions, the restoration was automatic.

The U.S. Supreme Court found that once a felon has his civil rights restored, after a conviction that that conviction can no longer be counted as a prior conviction. See: *Beecham v. U.S.*, 114 S.Ct. 1669...(1994); *Dickerson v. New Banner Inst. Inc.*, 103 S.Ct. 986 (1983).

One of the other convictions used to allege the persistent violator was a first-degree burglary case number CR-1761-82, which occurred on February 26, 1982.

This conviction was "discharged" prior to the aggravated driving under the influence charge.

This means the defendant only had one conviction that could be considered as a prior conviction for the purpose of charging persistent violator as of May 17, 1992.

MEMORANDUM IN SUPPORT - 12 -

000095

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RUPERT, IDAHO 83350-0396

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3 'Convicted' as ordinarily used in legal phrasology as indicating a particular phase of a criminal
4 prosecution, includes the establishing of guilt whether by accused's admission in open court by plea
5 of guilty to the charges presented, or by a verdict or finding of a court or jury. In a more
6 technical, legal sense, conviction means the final conclusion of the prosecution against the accused,
7 including the judgment and sentence rendered pursuant to a verdict or plea of guilty, and it is
8 frequently used to denote the judgment or sentence. (citations omitted.). A person, after plea of
9 guilty or verdict, has been convicted when the court decrees that he is guilty. *State v. O'Dell*, 71
10 Idaho 64, 68, 225 P.2d 1020, 1022 (1950).

11 Therefore, because Herrera's civil rights were restored, his two earliest felony
12 convictions cannot be used for purposes of the persistent violator enhancements.

13 IV. Motion for Bail Pending Appeal

14 Herrera requests this Court release him on his own recognizance or be admitted to bond
15 on his original bond amount. Herrera believes that he will prevail on any appeal taken from
16 any sentence handed down by this Court if he is not granted a new trial.

17 Pursuant to Idaho Criminal Rule 46(b) a defendant may be admitted to bail or released
18 upon his own recognizance by the court in which defendant was convicted pending an appeal
19 upon consideration of the factors set forth in subsection (a) of Rule 46 unless it appears that the
20 appeal is frivolous or taken for delay. The factors in 46(a) include:

- 21 (1) Defendant's employment status and history, and financial condition.
22 (2) The nature and extent of defendant's family relationships.
23 (3) Defendant's past and present residences.
24 (4) Defendant's character and reputation.
25 (5) The persons who agree to assist the defendant in attending court at the proper time.
26 (6) The nature of the current charge and any mitigating or aggravating factors that may bear
27 on the likelihood of conviction and the possible penalty.

28 MEMORANDUM IN SUPPORT - 13 -

00009

ROBINSON & ASSOCIATES

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

(7) Defendant's prior criminal record, if any, and, if defendant has previously been released pending a trial or hearing, whether defendant appeared as required.

(8) Any facts indicating the possibility of violations of law if defendant is released without restrictions.

(9) Any other facts tending to indicate that defendant has strong ties to the community and is not likely to flee the jurisdiction.

(10) What reasonable restrictions, conditions and prohibitions should be placed upon defendant's activities, movements, associations and residences.

The decision to admit a defendant to bail or release on their own recognizance is left to the discretion of the Court. I.R.E. 46(a). A brief review of the ten factors illustrate that Herrera should be considered for bail or an own recognizance release pending his appeal.

At this time, Herrera is not employed due to his incarceration. His financial situation is as any inmates would be: poor due to his incarceration. Herrera has held a number of jobs in the past including welding and other construction jobs. Herrera could be easily employed or pending his appeal.

The second factor that the court may consider is his family situation. Herrera has family in the area that includes his long time companion and children from that union. Herrera has spent most of his life in the Mini-Cassia area and would have a place to live if bail or released pending appeal was granted.

Herrera admittedly does not have the best reputation as to his character. Factor 4 allows the Court to consider his reputation. However, Herrera has no record of flight or failure to appear at his court hearing and is not a flight risk based upon his significant ties to the community. Herrera's family is in the Mini-Cassia area.

Herrera will acquiesce to any reasonable restrictions, conditions and prohibitions placed upon him by the Court regarding release or bail.

MEMORANDUM IN SUPPORT - 14 -

000097

V. Motion to Withdrawal Plea of Guilty

At this time Herrera makes application to withdraw his plea of guilty to the persistent violator charge due to the failure of his prior counsel to adequately inform him of the consequences of said guilty plea and that based on the above argument that two of Herrera's convictions should not be considered for purposes of the persistent violator statute.

The decision to grant a motion to withdraw a guilty plea lies in the discretion of the district court. *State v. McFarland*, 130 Idaho 358, 361, 941 P.2d 330, 333 (Ct.App.1997). Withdrawal of a guilty plea before sentence is imposed is not an automatic right, and the defendant has the burden of proving that the plea should be allowed to be withdrawn. *State v. Dopp*, 124 Idaho 481, 485, 861 P.2d 51, 55 (1993); *McFarland*, 130 Idaho at 362, 941 P.2d at 334. A defendant seeking to withdraw a guilty plea before sentencing must first show a just reason for withdrawing the plea. *Dopp*, 124 Idaho at 485, 861 P.2d at 55; *McFarland*, 130 Idaho at 362, 941 P.2d at 334. Once the defendant has met this burden, the state may avoid a withdrawal of the plea by demonstrating the existence of prejudice to the state. *State v. Henderson*, 113 Idaho 411, 414, 744 P.2d 795, 798 (Ct.App.1987). The defendant's failure to present and support a plausible reason to withdraw his or her guilty plea will dictate against granting withdrawal, even absent prejudice to the prosecution. *Dopp*, 124 Idaho at 485, 861 P.2d at 55; *Henderson*, 113 Idaho at 414, 744 P.2d at 798; as cited in *State v. Miller*, 134 Idaho 458, 460, 4 P.3d 570, 572 (Ct.App.2000).


Among other things, before a guilty plea can be accepted, the defendant must be informed of the consequences of his or her plea, including minimum and maximum punishments, and other direct consequences which may apply. I.C.R. 11(c)(2). A consequence of a guilty plea is direct where it presents a definite, immediate and largely automatic effect on the defendant's range of punishment. *Id.*, 134 Idaho 460, 4 P.3d 572. Due to the lack of effective counsel, Herrera did not

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3 give a voluntary waiver of his right to be tried on the persistent violator issue and should be
4 permitted to withdraw his guilty plea.

5 **VI. Conclusion**

6 Based on the above, Herrera respectively requests that new trial be held allowing him
7 adequate time to prepare for said trial.

8
9 DATED this 16th day of May, 2008.

10
11 By: 
12 Michael P. Tribe
13 Attorney for Defendant

14 **CERTIFICATE OF MAILING**

15 I hereby certify that on the 16th day of May, 2008, I served a copy of the foregoing
16 Memorandum upon:


17 Hon. John Melanson
18 Resident Chambers
19 Rupert, Idaho 83350

Hand delivered

20 Blaine Cannon
21 Deputy Prosecuting Attorney
22 P.O. Box 7
23 Burley, Idaho 83318

Fax: (208) 878-2924

24 by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to
25 said attorney at the foregoing address and by hand delivery or fax.

26
27 By: 
28 Michael P. Tribe

MEMORANDUM IN SUPPORT - 16 -

000093

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3 give a voluntary waiver of his right to be tried on the persistent violator issue and should be
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5 **VI. Conclusion**

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9 DATED this 16th day of May, 2008.

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11 By: 

12 Michael P. Tribe
13 Attorney for Defendant
14

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21 Blaine Cannon
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23 P.O. Box 7
24 Burley, Idaho 83318

Fax: (208) 878-2924

25 by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to
26 said attorney at the foregoing address and by hand delivery or fax.
27

28 By: 

Michael P. Tribe

MEMORANDUM IN SUPPORT. - 16 -

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ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

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Thank You, Your Honor.

If it would please the court, I'll try and be brief. I move to Petition the court & move to make a motion & do at this time make a motion to: discredit, disqualify, & disregard the Psychological Evaluation Report, given to the courts for review, to help determine an appropriate recommendation for, Valentino A. Herrera, on the grounds that the victim & Psychologist were acquainted. I.E. Friends. stated out of the verbal comments made to the examinee, from the examiner. The examiner stated to the examinee, that the victim, I.E. Alan Garrett are infact friends, by association in the very recent past. Alan Garrett, at one point in regards, to his job duties, was the transport officer for inmates, that sometimes had been court ordered, to be Eval, Exam, etc, etc, by Richard V. Smith, Ph.D.

By this apparent friendship by association, in which the examiner knew the victim to be in the law enforcement profession, and now the apparent victim of a battery case, caused by the examinee, I.E. Valentino Alex Herrera, found guilty of battery on A former law enforcement officer.

To Wilt; Alan Garrett.

The examiner, i.e. FRIEND of the VICTIM, has given a GROSS & MISSEADING evaluation & has very good reason to give a VERY APPARENT & PREJUDICIAL report of evaluation, examination, & SEVERE RECOMMENDATION for this defendant.

WHEREFORE;

Petitioner prays that the current evaluation, done by Ph.D. Smith, be rejected, & a second Evaluation be ordered, & done by someone other than Ph.D. Smith, who is not associated, to the victim, Alan Garrett, in any shape, form, or fashion.

Petitioner also prays that the P.S.I. report, currently & also blatantly PREDJUDICIAL & MISSEADING, recently submitted by Matilde Ortega, P.S.I. investigative officer, also be rejected, where she relied heavily upon the majority of the Ph.D. report, to give her own view.

Therefore & only upon the completion of an accurate & thorough review of the Ph.D. Smith & P.S.I. investigator Ortega's own identical submission; SENTENCING SHOULD BE POSTPONED, until a later date as prescribed by the court to remedy & rectify the overwhelming & irreversible HARM. being done to this defendant, should the existing examinations be allowed to stand at this time.

RESPECTFULLY SUBMITTED BY;

VALENTINO A. HERRERA

SUBSCRIBED & SWORN TO ME THIS 21st DAY of MARCH 2008
COMM. ENDS IN CASSIA CO.

TINA L. CRANNEY
NOTARY PUBLIC

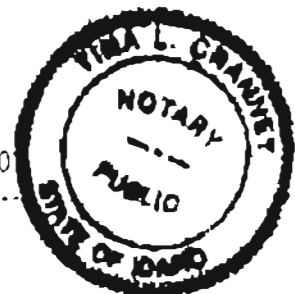


EXHIBIT A

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in the 1st page of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 147th, 148th, 149th, 150th, 151st, 152nd, 153rd, 154th, 155th, 156th, 157th, 158th, 159th, 160th, 161st, 162nd, 163rd, 164th, 165th, 166th, 167th, 168th, 169th, 170th, 171st, 172nd, 173rd, 174th, 175th, 176th, 177th, 178th, 179th, 180th, 181st, 182nd, 183rd, 184th, 185th, 186th, 187th, 188th, 189th, 190th, 191st, 192nd, 193rd, 194th, 195th, 196th, 197th, 198th, 199th, 200th, 201st, 202nd, 203rd, 204th, 205th, 206th, 207th, 208th, 209th, 210th, 211st, 212nd, 213th, 214th, 215th, 216th, 217th, 218th, 219th, 220th, 221st, 222nd, 223rd, 224th, 225th, 226th, 227th, 228th, 229th, 230th, 231st, 232nd, 233rd, 234th, 235th, 236th, 237th, 238th, 239th, 240th, 241st, 242nd, 243rd, 244th, 245th, 246th, 247th, 248th, 249th, 250th, 251st, 252nd, 253rd, 254th, 255th, 256th, 257th, 258th, 259th, 260th, 261st, 262nd, 263rd, 264th, 265th, 266th, 267th, 268th, 269th, 270th, 271st, 272nd, 273rd, 274th, 275th, 276th, 277th, 278th, 279th, 280th, 281st, 282nd, 283rd, 284th, 285th, 286th, 287th, 288th, 289th, 290th, 291st, 292nd, 293rd, 294th, 295th, 296th, 297th, 298th, 299th, 300th, 301st, 302nd, 303rd, 304th, 305th, 306th, 307th, 308th, 309th, 310th, 311st, 312nd, 313th, 314th, 315th, 316th, 317th, 318th, 319th, 320th, 321st, 322nd, 323rd, 324th, 325th, 326th, 327th, 328th, 329th, 330th, 331st, 332nd, 333rd, 334th, 335th, 336th, 337th, 338th, 339th, 340th, 341st, 342nd, 343rd, 344th, 345th, 346th, 347th, 348th, 349th, 350th, 351st, 352nd, 353rd, 354th, 355th, 356th, 357th, 358th, 359th, 360th, 361st, 362nd, 363rd, 364th, 365th, 366th, 367th, 368th, 369th, 370th, 371st, 372nd, 373rd, 374th, 375th, 376th, 377th, 378th, 379th, 380th, 381st, 382nd, 383rd, 384th, 385th, 386th, 387th, 388th, 389th, 390th, 391st, 392nd, 393rd, 394th, 395th, 396th, 397th, 398th, 399th, 400th, 401st, 402nd, 403rd, 404th, 405th, 406th, 407th, 408th, 409th, 410th, 411st, 412nd, 413th, 414th, 415th, 416th, 417th, 418th, 419th, 420th, 421st, 422nd, 423rd, 424th, 425th, 426th, 427th, 428th, 429th, 430th, 431st, 432nd, 433rd, 434th, 435th, 436th, 437th, 438th, 439th, 440th, 441st, 442nd, 443rd, 444th, 445th, 446th, 447th, 448th, 449th, 450th, 451st, 452nd, 453rd, 454th, 455th, 456th, 457th, 458th, 459th, 460th, 461st, 462nd, 463rd, 464th, 465th, 466th, 467th, 468th, 469th, 470th, 471st, 472nd, 473rd, 474th, 475th, 476th, 477th, 478th, 479th, 480th, 481st, 482nd, 483rd, 484th, 485th, 486th, 487th, 488th, 489th, 490th, 491st, 492nd, 493rd, 494th, 495th, 496th, 497th, 498th, 499th, 500th, 501st, 502nd, 503rd, 504th, 505th, 506th, 507th, 508th, 509th, 510th, 511st, 512nd, 513th, 514th, 515th, 516th, 517th, 518th, 519th, 520th, 521st, 522nd, 523rd, 524th, 525th, 526th, 527th, 528th, 529th, 530th, 531st, 532nd, 533rd, 534th, 535th, 536th, 537th, 538th, 539th, 540th, 541st, 542nd, 543rd, 544th, 545th, 546th, 547th, 548th, 549th, 550th, 551st, 552nd, 553rd, 554th, 555th, 556th, 557th, 558th, 559th, 560th, 561st, 562nd, 563rd, 564th, 565th, 566th, 567th, 568th, 569th, 570th, 571st, 572nd, 573rd, 574th, 575th, 576th, 577th, 578th, 579th, 580th, 581st, 582nd, 583rd, 584th, 585th, 586th, 587th, 588th, 589th, 590th, 591st, 592nd, 593rd, 594th, 595th, 596th, 597th, 598th, 599th, 600th, 601st, 602nd, 603rd, 604th, 605th, 606th, 607th, 608th, 609th, 610th, 611st, 612nd, 613th, 614th, 615th, 616th, 617th, 618th, 619th, 620th, 621st, 622nd, 623rd, 624th, 625th, 626th, 627th, 628th, 629th, 630th, 631st, 632nd, 633rd, 634th, 635th, 636th, 637th, 638th, 639th, 640th, 641st, 642nd, 643rd, 644th, 645th, 646th, 647th, 648th, 649th, 650th, 651st, 652nd, 653rd, 654th, 655th, 656th, 657th, 658th, 659th, 660th, 661st, 662nd, 663rd, 664th, 665th, 666th, 667th, 668th, 669th, 670th, 671st, 672nd, 673rd, 674th, 675th, 676th, 677th, 678th, 679th, 680th, 681st, 682nd, 683rd, 684th, 685th, 686th, 687th, 688th, 689th, 690th, 691st, 692nd, 693rd, 694th, 695th, 696th, 697th, 698th, 699th,

Left right for the station and the jury does not need to be instructed because they are seated for their own pleasure.

It appears that the largest effect of the treatment is on the largest size class, but also that the largest effect of the treatment is on the largest size class.

1. Find the area of shaded region in fig.
 2. Find the area of shaded region in fig.

1. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (1/4)
 2. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (1/4)
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 6. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (1/4)
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 8. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (1/4)
 9. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (1/4)
 10. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (1/4)

1. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (Probability of getting 2 heads)
 2. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$ (Probability of getting 2 tails)

[illegible]

1. The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.

2. The second part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.

3. The third part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.

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9. The ninth part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.

10. The tenth part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

[illegible]

1992

000106

[illegible]

000107

Duties of a Court Bailiff

In Cassia County.
T. T. of

Motion to dismiss - 18-18-cv

DeLaise Counsel Keith Jensen argued & in fact of Judge Melanson as to the duties of that of a bailiff. with his argument he motioned to the Court to dismiss the

charges against his client Matthew Horner unbeknownst to Keith Jensen, the Court and

the State Attorney was that the victim in this case, the alleged victim Alan Christ

was the author of these specific job duties Refer to T. T. p. 1, 8, 10, 12, 13, 14, 18, L. 6-25,

1-9, 17-24, 22-25, 1-5, 2-8-9-23, but based on these job duties, and particularly T. T. p. 18,

L. 12-19. The judge made his decision on duties written specifically by Alan Christ himself

Refer to T. T. January 3rd 2007 p. 79, L. 9-21. Did not know & ever really have a chance at all?

Judge Melanson denied his motion

Plus one = 7

April 2008

testimony to know all this before, then
they have turned out different, then again, right.

Judge Welton and Alvin Barrett were

in good friends as established by the testimony.

of Alvin Barrett on the stand (H. p. 32, 31-18)

Mr. Tribe, the purpose of this information

is to show that this is reasonable evidence that

was not available before trial, to me, because

it wasn't disclosed until I during trial. Therefore

giving me known a very small benefit of the

doubt, which I am not willing to do, this information

can be admitted as reasonable and grounds

for a new trial. what do you think? Also

of finding two more witnesses at the trial

in case of the new evidence given to 1991-92

then the court would also be in a position to

decide and point out that there is no right

According to 607(b) in regard to the second trial

1/1/19

1/1/19

1/1/19

1/1/19

1/1/19

1/1/19

1/1/19

1/1/19

1/1/19

1/1/19

I need you to file a motion to the court
showing that Jensen didn't ask for a continuance as
I had asked him, according to A.R. 10(c) and
I.C. § 19-1908, that would have given me three
extra days to contemplate and try to make sense
of what was taking place that morning. Also, it
has just occurred to me that Jensen didn't de-
fend me to his fullest ability because he had
a personal conflict with me. This conflict st-
ems from his representation of Rost Franco.
She is the mother of my two youngest child-
ren, September Rose, and October Frost Herrera.
During a child custody trial, Rost and I lost
our parental rights to September, but we, Rost
and I still have October. Because Rost and I
were not married at that time, nor are we
married to this day, we were appointed two
different counsels. She was appointed Jensen,
I was given Zellinger. When I later filed

000111

Letter to court 4/5

100

4/5/08

never bothered to inform me of the persistent
 violator charge. Why didn't Kent advise me to
 just plead guilty to the battery and the
 state would drop the Per. vio. charge. The state
 what do you want to do? I asked him
 what do you think? The said we got a
 very strong case, I think we are winning so
 we went to trial. Kent Jergen never intended
 me to win. He's been playing hard to give
 us the state from the beginning. I
 need to be heard Sir, and I need your
 help. As I said, I was R to with real
 deep. I wasn't thinking clearly from day one.
 Now we been off of the stuff for 16
 months. Things I don't wither but then
 are all to appearance now. Kent wanted me
 to go to trial so I could be convicted.
 I need T.C. § 19-1908 filed for the court
 to rule that I was either to late or to slow
 that is the different of Justice I need

000112
 1/1/19

Things I want filed and read filed, and asked for.

1. I need the trial transcripts of status conference

just before the hearing that Judge Mente

Carlsen stepped down. Approx. 10-1-06

9-1-06
9-2-07

In that conference it will reveal that Kait-

Carlsen never entertained a plea bargain. On my
be half. Mr Carlsen stated to the Court after

his there asked if a plea agreement had been

reached or offered. Mr Carlsen replied, "No

your Honor, ~~because~~ No agreement has

been reached and no agreement has been

offered, and frankly your Honor, nothing

short of a complete dismissal would be

accepted.

I need this transcript to show to the
Court that Mr Carlsen never had any intention
of entering into a plea bargain by the state,
even if they offered one. That's why Kait

and returned this? Now, does Jensen
 was asking Rosa to cut all ties with
 me, or what, he accused me of having
 all of her problems. Rosa stated this to me.
 When our first, and last date, I mentioned to
 you that I was very addicted to mth. ~~when~~
 Jensen didn't want me to live like that and
 used my trial as an opportunity to rid Rosa
 of me from her life for good, even though
 Rosa was with me of her own free will.
 Jensen also makes mention of this child -
 custody case at my last sentencing hearing.
 I'd show you the transcript but it is in my
 personal property in Boise. I need all of
 this mentioned to the court. Sir I don't
 mean you any disrespect but I don't
 mention any of this to the District Court
 I have no hopes of the Court of Appeals
 overturning any of this on my direct appeal.
 If you don't like it I will. ~~well~~

A new trial. Jensen never did file or
ask the Court to waive my speedy trial
right when I asked him to either I need
that mentioned. I have no objection
to this new trial.
Sir I know that I must sound like a
broken record of a mad-man or full-
blown lunatic. But if you were facing
what I'm facing you'd be...

I also want you to know that I asked
Jensen, "What the state offering or recommending?"
He said they were only going to recommend
5, and that the judge could do whatever.
So I ask, what's that mean? He said the
prosecutor was going to recommend "oh, 5
plus whatever" well I now know what
that whatever is. 25 additional years is
a very big "whatever" until I make the
understanding you long enough to see that
they. I'll let you get back to work.

Sincerely,
W. H. Hoffmann

1/1/77
 1/1/77
 1/1/77

1/1/77
 1/1/77

1/1/77

1/1/77

Office mail system, addressed to:

with the (person mail system) for processing to the United

PC, Lee for the make 1 times 2%

2000, I made a true and correct copy of (THIS)

I hereby certify that on the 1st day of April,

(Signature of William)

Chlorophyll

1. Chlorophyll a (blue-green)
2. Chlorophyll b (yellow-green)
3. Chlorophyll c (brownish-green)
4. Chlorophyll d (red)

Chlorophyll a is the most common
Chlorophyll b is the second most common
Chlorophyll c is the third most common
Chlorophyll d is the least common

Chlorophyll is a green pigment found in
plants and algae. It is responsible for
the green color of leaves and for the
process of photosynthesis.

Chlorophyll

Chlorophyll

100-100000

2000 MAY 19 PM 4: 26

000118

The purpose of this letter is to let you know
that the same series of letters of introduction
interest that I believe are going to be sent to
be received a meeting. I would like for you
to participate in it as well as our present
meeting. I'm also sending you these letters
they pertain to the ethics in relation of our

for that to not include a letter to us as
others to the way. Even though we are
not in a position to be sending to this rela-
ing. In St. 7 Watts, 131 Ed. 232, Watts is
a letter to the way. I'm sending a letter
to the way. I.C. § 19-1032 (b) (1902).
The reference here is that the way is the
way. I believe it is the way that
the way had the way, to release the way,
the way had the way, to release the way,
the way had the way, to release the way,
the way had the way, to release the way,

the way had the way, to release the way,

[illegible]

the Court was a party to no such
thing. The Court was clear in its
the agreement I made objection to her
there was no such because the Court
already ruled I didn't have that kind
of authority to defend myself even
when my counsel was clearly being defec-
tively and ineffectively. I need for you
to also resist this. Dr. I don't want to
have any more clear. I don't want
any more of you. I'm excluded from
your drafts. I want you to know that I'm
not going to sit here and let you think
that I was the last time. I mean you no
offense. I want to go home. To have a
wife and son. They want me home. I'm
saying to you I don't want you. I don't
want you. I don't want you. I don't want
you. I don't want you. I don't want you.
I don't want you. I don't want you. I don't want you.

Dr. I don't want you

[illegible]

I have been thinking about you
 very much lately. I hope you are
 well. I am feeling better now.
 Love,
 John

One more thing I need to mention
to make this clear.

Shops of 20m Affiliated to the
No. 56 - 20m Affiliated to the
20m Affiliated to the

I want the 1st 100 lbs of wool

however, restrain the trial court from instructing the jury on lesser included offenses when such instructions are warranted but are not requested by either party.

We recognize that a defendant may, as a trial tactic, prefer that no lesser included offense instruction be given. The defendant may prefer to gamble that the jury will not be convinced to convict on the charged offense and will therefore be forced to acquit even though the evidence proves a lesser offense. However, we do not perceive that our statute gives the defendant a right to pursue this course, nor do we believe that justice would be served by such a rule. We find the reasoning of the California Supreme Court on this issue to be cogent:

Our courts are not gambling halls but forums for the discovery of truth. Truth may lie neither with the defendant's protestation of innocence nor the prosecution's assertion that the defendant is guilty of the offense charged, but at a point between these two extremes: the evidence may show that the defendant is guilty of some intermediate offense included within, but lesser than, the crime charged. A trial court's failure to inform the jury of its option to find the defendant guilty of the lesser offense would impair the jury's truth ascertainment function. Consequently, neither the prosecution nor the defense should be allowed, based on their trial strategy, to preclude the jury from considering guilt of a lesser offense included in the crime charged. To permit this would force the jury to make an "all or nothing" choice between conviction of the crime charged or complete acquittal, thereby denying the jury the opportunity to decide whether the defendant is guilty of a lesser included offense established by the evidence.

People v. Barton, 12 Cal.4th 186, 47 Cal. Rptr.2d 569, 906 P.2d 531, 536 (1995) (citations omitted).

[4] Because the language of I.C. § 19-2132 does not restrain a trial court from instructing on lesser included offenses in the absence of a request from either party, and because we find the *Barton* analysis persuasive, we hold that the district court here possessed authority to instruct the jury on lesser included offenses even though neither party requested these instructions.

B. Sentence

We turn now to the sentencing issues raised by the defendant. In his appellant's brief, Watts complains that he received an illegal sentence for aggravated battery in the original judgment of conviction. He points out that the judgment identifies Count II as "aggravated battery" and imposes a unified seventeen-year sentence, which exceeds the statutory maximum of fifteen years for aggravated battery. *See* I.C. § 18-908. However, Watts was not found guilty of aggravated battery on Count II but of aggravated battery on a law enforcement officer, and the original judgment was therefore in error in identifying the offense of which Watts was convicted. After Watts's appellant's brief was filed, the district court entered an amended judgment which corrected this error by identifying the Count II offense as "aggravated battery on a law enforcement officer." Whether this is deemed to be an independent offense or aggravated battery with a sentence enhancement under I.C. § 18-915(b), the sentence is within the statutory limit.

Watts has also pointed out an error in his sentence for Count III, aggravated assault, in the judgment of conviction, and this error was not corrected in the amended judgment. The amended judgment states that for Count III, aggravated assault, Watts is sentenced to "five (5) years in prison, five (5) years indeterminate . . ." This phrase is ambiguous in that it is unclear whether it means that Watts has a total sentence of five years, all of which is indeterminate, or a unified sentence of ten years, five of which is indeterminate. However, either of these interpretations is inconsistent with the sentence pronounced at the sentencing hearing.(fn2) The court minutes

Cantrill v. American Mail Line, 42 Wash.2d 590, 257 P.2d 179, 189 (Wash.1953) (citations omitted) (emphasis added).

The department's witness was not a "qualified witness." The witness did not supervise the creation of the HLA report. Therefore, the trial court did not abuse its discretion in refusing to admit the HLA report under I.R.E. 803(6).

[7] In *State v. Hester*, 114 Idaho 688, 760 P.2d 27 (1988), the Court spelled out the requirements for admission under the "other exceptions" provisions of I.R.E. 803(24):

To be admissible under I.R.E. 803(24), the court must determine that (A) the statement has circumstantial guarantees of trustworthiness equivalent to those in Rules 803(1) to 803(23), (B) the statement is offered as evidence of a material fact, (C) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (D) the general purposes of the rules of evidence, and the interests of justice, will best be served by admission of the statement into evidence. Further, (E) a statement may not be admitted under I.R.E. 803(24) unless its proponent gives the adverse party adequate notice and information regarding use of the statement.

Id. at 697, 760 P.2d at 36.

Again, as in the case of I.R.E. 803(6), although we can discern several reasons under the requirements of this exception that would support the trial court's exercise of discretion in not admitting the HLA report, the first reason is sufficient. Except for the department's claim in its complaint that Altman had a duty to repay the department \$207 for costs incurred in the drawing, shipping and analysis of the blood samples and the allegation that a true and correct copy of the analysis result were attached to the complaint, there is no basis to support a finding that the department gave Altman adequate information and notice regarding the use of the HLA report. Therefore, the trial court did not abuse its discretion in not admitting the HLA report under I.R.E. 803(24).

IV.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN NOT ADMITTING THE CURRICULUM VITAE OF THE DOCTOR WHO MADE THE HLA REPORT.

[8] The department asserts that the trial court should have admitted the curriculum vitae of the doctor who made the HLA report. We conclude that the trial court did not abuse its discretion in not admitting the curriculum vitae.

The department argues that the doctor's curriculum vitae was admissible under I.C. § 7-1116 and under the business records exception to the hearsay rule contained in I.R.E. 803(6). We have disposed of each of these arguments above in ruling on the admissibility of the HLA report. The cur-

riculum vitae has no better standing for admission than the report.

Charles E. Johnson

I have at my home a true
and correct copy of the LEI 213

MIKE W. J. S. and sister to:

James P. Prince / Attorney at Law
PC 3-3396
Rupert ID 8335.

James P. Prince
4-17-03

4-17-03

2002 MAY 19 PM 4:26

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COPY

VALENTINO HERRERA
I.M.S.I. / A-BIK.
P.O. Box 51
Boise, Idaho, 83707

DEFENDANT PRO SE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,
Plaintiff,

Vs -

VALENTINO HERRERA,
Defendant.

Case No. CR-06-3507*D

MEMORANDUM OF LAW
AND CORRECTION

Comes now, the above named defendant, who has
Filed a "MOTION FOR NEW TRIAL, STRIKING OF THE PRE-SENTENCE
Addendum, Striking of Psychological Examination and Petition For NEW
Examination, MOTION to STRIKE PRESISTANT Violator charge, MOTION
For APPOINTMENT OF NEW Counsel, MOTION to withdraw Pled of guilty,
MOTION For Bail Pending APPEAL, ETC, ETC.

DEFENDANT ask the Court to attach this MEMORANDUM / CORRECTION
to the above stated motion Filed on or about DECEMBER 17, 2007
in accordance with the (mailbox) rule.

DEFENDANT ask the Court to consider all Facts, CORRECTIONS and
ARGUMENTS PRESENTED HEREIN on an EQUAL basis as those and with those
PRESENTED in the afore stated motion.

The white bird also is very common in the
country that we have been exploring, and
not so abundant as the yellow one. The latter
has a soft, low, musical sound to itself, and
therefore is not so much in evidence to
those who being surrounded by it, but is
heard where birds are scarce.

1. *Chlorophyll a* and *Chlorophyll b* contents were determined by spectrophotometry using the method of Lichtenthal and Whaley (1987).

(124)

In McCulloch v. Maryland, 17 U.S. (4 Wheat.), 316, 4 L. Ed. 579 (1819), my state law that conflicts with federal law is without effect." King v. Ford Motor Co., 703 F.3d 886, 391 (4th Cir. 2013) (quoting Cipollone v. Liggett Group, Inc., 355 U.S. 503, 516 (1992)).

This case went out to the Court.

Ship (Status)

Said: no Guns for anyone with a conviction or assist

Submitted on 13th July 1966

(continued)

7-10-68

[illegible]

(2000-2001)

It is not possible to have a good
government without (slaves) to
be used for the same. The
the slaves are the business of
the government and the
release of the slaves has been
operated (so, and the trust).

Our Home for the record
reflect that in 1900 that
I was present in July 1900
and in the following year
entirely absent from the same.

the law and now In 1974
the law, the end in Law's Supra we see
because of the present state
of the law, prior to 1974

to _____
C. P. Hoese Jr. San Jose State

000153

1. The first of these is the fact that the
 2. of the PA is not to be taken as
 3. of the PA is not to be taken as
 4. of the PA is not to be taken as
 5. of the PA is not to be taken as
 6. of the PA is not to be taken as
 7. of the PA is not to be taken as
 8. of the PA is not to be taken as
 9. of the PA is not to be taken as
 10. of the PA is not to be taken as

Let's look at it.

144. 1. 31. 1902 (24. 11. 1902) 145

7th & W of the 1917 National Act of 1918.

18 USC, §§ 2252a-1, 2252b

... .. a

no other person, firm, company, or service

U.S. DEPARTMENT OF COMMERCE

1. *Chlorophyll a* (Chl a) and *Chlorophyll b* (Chl b) are the two main types of chlorophyll found in plants. They are responsible for capturing light energy and converting it into chemical energy through photosynthesis.

0001.34

000134

James M. Smith, Jr. 1995

1. The first part of the paper is devoted to a discussion of the various methods of determining the rate of reaction. The second part is devoted to a discussion of the various methods of determining the order of reaction. The third part is devoted to a discussion of the various methods of determining the activation energy of a reaction.

Dear Anne, I am glad to hear
from you and that you are
well. I am well and hope
you are the same. I am
thinking of you and hope
you are happy. I am
thinking of you and hope
you are happy. I am
thinking of you and hope
you are happy.

000155

Quinn, granted such a writ as a matter of course.
[The] purpose of the procedure is to
allow a state to have a conviction
which a state had officially expunged as
a final act in a long and hard struggle.
See, e.g., Dickerson v. New Bremen Text Inc.,
460 U.S. 103 (1983). The unfairness of this
procedure was aptly summarized by Judge
Kozinski: "[T]he purposes of the two
alternatives are at loggerheads. The
state wishes to give the defendant a
clean slate, not federal law makes the
reverse mandatory." There over defendants
whose convictions were reversed under the
law had every reason to believe that
the state had been wiped clean, and no
reason to expect the expunged conviction as
to reappear in a later federal proceeding.

In Quinn, the state court had held that
the state court's decision was final and
could not be overturned. The state court
had held that the state court's decision
was final and could not be overturned.
The state court had held that the state court's
decision was final and could not be overturned.

911 F.2d 219; 89-30064, United States v. Gomez; 9th Cir. 1990

911 F.2d 219
United States v. Gomez

Docket No. 89-30064

August 08, 1990

Page 219

911 F.2d 219 (9th Cir. 1990)
UNITED STATES of America, Plaintiff-Appellee,
v.
Baldemar GOMEZ, Defendant-Appellant.
No. 89-30064.
United States Court of Appeals, Ninth Circuit
August 8, 1990

Argued and Submitted March 9, 1990.

Scott E. Fouser, Gigray, Miller, Downen & Fouser, Caldwell, Idaho, for defendant-appellant.

Kim R. Lindquist, Asst. U.S. Atty., Boise, Idaho, for plaintiff-appellee.

Appeal from the United States District Court for the District of Idaho.

Before WRIGHT, REINHARDT and O'SCANNLAIN, Circuit Judges.

O'SCANNLAIN, Circuit Judge:

May a state statute restore a convicted felon's civil rights and thus effectively bar prosecution under a federal statute for unlawful possession of a firearm? After analysis of relevant Idaho and federal statutes we conclude the answer is "yes."

I

Before his arrest in this case, Baldemar Gomez had been convicted in Idaho of five crimes punishable by imprisonment for terms exceeding one year. Over the course of approximately thirteen years, he had been convicted of second-degree murder, voluntary manslaughter, resisting an officer, possession of a controlled substance by an inmate, and battery on a correctional officer. After completing his sentences for all of these crimes Gomez

Page 220

was discharged by Idaho authorities on December 13, 1986.

On November 13, 1987, Sheriff's officers from Canyon County, Idaho, entered Gomez's home pursuant to a lawful search warrant. Officer Lindquist observed Gomez moving about in the pantry,

pulled him out, and handcuffed him. Upon searching the pantry, officer Lindquist discovered a .38 caliber, semi-automatic pistol. A grand jury charged Gomez with having knowingly possessed a firearm after having been previously convicted of a crime punishable by imprisonment for a period of more than one year. See 18 U.S.C. Sec. 922(g)(1).

Prior to trial, Gomez filed a motion in the district court for a bifurcated presentation of evidence, which the district court denied. Gomez subsequently filed a motion to dismiss the indictment, which the district court denied. After a two-day trial the jury found Gomez guilty as charged and judgment was duly entered and sentence imposed.

Gomez now appeals from the district court's orders denying his motions to bifurcate and to dismiss. We have jurisdiction under 28 U.S.C. Sec. 1291.

II

Under 18 U.S.C. Sec. 922(g),

[i]t shall be unlawful for any person--

1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ... possess ... any firearm or ammunition.

(emphasis added). As used in this statute, the word "convicted" has a precise meaning:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. Sec. 921(a)(20).

The first sentence in this passage from section 921(a)(20) leads us to the Idaho Statutes. All criminal proceedings concerning Gomez took place in Idaho; therefore, the law of Idaho controls. See *United States v. Cassidy*, 899 F.2d 543, 545 (6th Cir.1990) (applying law of Ohio).

The second sentence of this passage "exempt[s] a person from federal firearms disabilities, notwithstanding a felony conviction, if such person has had civil rights restored ... unless such ... restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." *Id.* at 546 (quoting 18 U.S.C. Sec. 921(a)(20)). That is, "[i]f state law has restored civil rights to a felon, without expressly limiting the felon's firearms privileges, that felon is not subject to federal firearms disabilities." *Id.* Whether Idaho restored Gomez's civil rights and then whether Idaho expressly limited Gomez's firearms privileges are the controlling issues before us.

A

To determine whether a convicted felon's civil rights have been restored within the meaning of section 921(a)(20), we look to the whole of state law. See *id.*, 899 F.2d at 549. In enacting section 921(a)(20), "[t]he intent of Congress was to give effect to state reforms with respect to the status of an ex-convict. A narrow interpretation requiring that we look only to the document, if any, evidencing a

restoration of rights, would frustrate the intent of Congress." *Id.* at 548 (citing S.Rep. No. 97-476, 97th Cong., 2d Sess. 4, 12 (1982)).

There need not be a "full" restoration of rights. *Cassidy*, 899 F.2d at 549; *Presley v. United States*, 851 F.2d 1052, 1053 (8th Cir.1988). "If Congress had intended a requirement of a complete restoration of all rights and privileges forfeited upon conviction, it could easily have so stated." *Cassidy*, 899 F.2d at 549. Congress chose not to impose such a requirement.

Page 221

Like many other states, Idaho has a general provision in its state laws restoring rights to convicted felons who have completed their prison and probation terms. Section 18-310(2) of the Idaho Code states that

[u]pon the final discharge of a person convicted of any felony except treason, a person shall be restored the full rights of citizenship. As used in this subsection, 'final discharge' means satisfactory completion of imprisonment, probation and parole as the case may be." (emphasis added). [FN1]

Unlike some states, Idaho also expressly provides that discharged felons may vote and serve on a jury. Compare Idaho Constitution, Art. 6, Sec. 3 (persons disqualified from right to vote include those who have "been convicted of a felony, and who ha[ve] not been restored to the rights of citizenship"), and *id.* Sec. 2-209(2)(d) (prospective juror disqualified to serve only if he "has lost the right to vote because of a criminal conviction"), with *Presley*, 851 F.2d at 1053 (Missouri law disqualifies convicted felon from service on a jury and from eligibility for election as sheriff).

In spite of these various state-code provisions, the U.S. Attorney argues that Idaho has not restored Gomez's civil rights. The government points to certain statutory restrictions which Idaho has placed upon convicted felons. For instance, under the Idaho Rules of Evidence, a former felon may be impeached at trial. See Idaho R.Evid. 609. A prior felony conviction may be taken into account for purposes of sentencing for another crime, see Idaho Crim.R. 32(b)(2) and in the setting of bail, see Idaho Crim. Rule 46(a)(7). A convicted felon may be prosecuted as a persistent violator under Idaho law. See Idaho Code Sec. 19-2514.

We are not persuaded that these restrictions overcome the effect of Idaho's broad restoration of rights provision and the attendant statutes expressly granting to discharged felons the rights to vote and serve on a jury.

In determining that Gomez's civil rights have been restored, we decline to accept the government's suggestion that the federal statute only recognizes restoration by individual affirmative act. It is not enough, the government argues, that the state code contains provisions granting rights to discharged felons. [FN2] The federal statute, however, does not impose such a requirement. The statute plainly states that "[a]ny conviction ... for which a person ... has had civil rights restored shall not be considered a conviction ... unless restoration of civil rights expressly provides that the person may not ship, transport, possess or receive firearms." 18 U.S.C. Sec. 921(a)(20). If Congress intended to require an individual affirmative act of restoration by the state, Congress could have so provided. We will not infer the requirement. "Where Congress has manifested its intention, we may not manufacture ambiguity in order to defeat that intent." *Bifulco v. United States*, 447 U.S. 381, 387, 100 S.Ct. 2247, 2252, 65 L.Ed.2d 205 (1980).

B

000141

We next consider whether Idaho "expressly provides that [a convicted felon] may not ship, transport, possess or receive firearms." 18 U.S.C. Sec. 921(a)(20). If it does, then Gomez was properly convicted under section 922(g) notwithstanding his restoration of other civil rights. See Cassidy, 899 F.2d at 550. We emphasize, however, that the provision restricting the convicted felon's right to ship, transport, possess or receive firearms must be express. "A state must tell the felon point blank that weapons are not kosher." United

Page 222

States v. Erwin, 902 F.2d 510, 513 (7th Cir.1990).

Idaho does not expressly provide that a convicted felon "may not ship, transport, possess or receive firearms." The government fails to point to any Idaho statute imposing such a restriction upon convicted felons. This crucial fact distinguishes the present case from Erwin and Cassidy. In those cases, other circuit courts of appeal determined that the states had expressly restricted convicted felons from possession of firearms. See Erwin, 902 F.2d at 518 (noting that Ill.Rev.Stat. ch. 38 p 24-1.1 makes it a crime for a previously convicted felon to possess a firearm); Cassidy, 899 F.2d at 550 n. 15 (Ohio Rev.Code Sec. 2923.13 provides, inter alia, that a previously convicted felon may not possess a firearm).

Because Idaho has no such express provision in its code, we must overturn Gomez's conviction. Idaho restored Gomez's civil rights without expressly restricting his right to possess firearms. We cannot say that at the time of his arrest he stood "convicted" of a crime punishable by imprisonment for a term exceeding one year within the meaning of section 922(g). [FN3]

REVERSED AND REMANDED.

Notes:

[FN1] We note that the Attorney General for the state of Idaho has rendered a legal opinion to the effect that the term "rights of citizenship," as used in Idaho Code Sec. 18-310(2), means "civil rights." See State of Idaho Attorney General's Opinion No. 86-16, Dec. 19, 1986, at 6 (available on Westlaw).

[FN2] The government appears to draw its argument from a formal legal opinion interpreting the federal statute rendered by the Attorney General for the State of Idaho. See Idaho Attorney General's Opinion No. 86-16, Dec. 19, 1986 ("[a] conviction for [a] felony is a historical fact which does not waft away without an expungement"). We give the Idaho Attorney General's opinion, construing federal law, no special weight and decline to follow it here.

[FN3] Having determined that Gomez's motion to dismiss his indictment should have been granted, we need not consider whether the district court erred in denying Gomez's motion to bifurcate.

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000142

I have been thinking of you very much lately, and
 wondering how you are getting on. I hope you are
 well and happy. I have been very busy lately, but
 I have managed to find some time to write to you.
 I have been thinking of you very much lately, and
 wondering how you are getting on. I hope you are
 well and happy. I have been very busy lately, but
 I have managed to find some time to write to you.

000143

Under the heading "Constitution" the following is printed: "The
Constitution of the United States is the supreme law of the land."
The word "Constitution" is printed in large letters. The word "is" is
printed in small letters. The word "the" is printed in small letters.
The word "United" is printed in small letters. The word "States" is
printed in small letters. The word "is" is printed in small letters.
The word "the" is printed in small letters. The word "land" is
printed in small letters.

[illegible]

Certificate of Release

I, Shirley Horner, have caused the following to
be signed for those listed below, on this 19th
Day of MAY 2008 with the Mississippi
Criminal Justice Center prisoners mail
system

Mississippi County Court Clerk
Shirley Horner
1454 S. Main Street
Burlington 83313

Assistant Prosecutor
P.O. Box 7
Burlington 83313

Shirley Horner
Date 5-17-08 with two prisoners
mail
system

Shirley Horner

2008 MAY 19 PM 4:28

FILED

2008 MAY 20 PM 2:45

CLERK'S OFFICE

Date: 5/19/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 01:24 PM

Minutes Report

Page 1 of 2

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Pending Motions	Minutes date:	05/19/2008
Assigned judge:	John Melanson	Start time:	01:08 PM
Court reporter:	Maureen Newton	End time:	01:08 PM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	Douglas G Abenroth		
Defense attorney:	Michael P Tribe		

Tape Counter: 116 The defendant is present and is in custody.
Michael Tribe is present on behalf of the defendant.

Tape Counter: 117 Doug Abenroth is present on behalf of the State of Idaho.
The Court reviews the pending motions:
Motion for New Trial
Motion to Suppress / Strike the PSI Addendum
Motion to Strike the Psychological Evaluation
Motion to Strike Persistent Violator Charge
Motion to Withdraw Guilty Plea
Motion re: bond

Tape Counter: 118 The defendant addresses the Court.

Tape Counter: 119 Michael Tribe addresses the Court.

Tape Counter: 121 Doug Abenroth addresses the Court; requests a continuance; cites considerations.

Tape Counter: 122 Michael Tribe requests a few moments to talk with his client; cites considerations.

Tape Counter: 123 Court in recess.

Tape Counter: 124 Court resumes.

Tape Counter: 125 Michael Tribe addresses the Court; does not object to a continuance; cites considerations.

Tape Counter: 126 Doug Abenroth requests a couple of weeks.

The Court sets this matter for hearing on June 09 2008

Date: 5/19/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 01:24 PM

Minutes Report

Page 2 of 2

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 126

The Court addresses Counsel reviews Motion to Dimiss Part 2 of Amended Complaint and Motion to Disqualify Judge; which is missing out of the original file; cites the original document was located in the duplicate file; requests permission to take the original out of the duplicat file and put it in the original file.

No objection by Counsel.

Tape Counter: 129

Doug Abenroth addresses the Court re: date on motion.

The Court addresses Court and Counsel re: ex parte communication.

Tape Counter: 131

Doug Abenroth has no preference.

Michael Tribe requests ex parte communications contiue to be shared with Counsel.

Tape Counter: 132

Hearing concludes.

Case No. 3507 H.D. 123

FILE
D. Clerk of the Court 23 APR 1933 2:48

Dear Sir,
Enclosed please find a copy of the

1/4 1/2 1/2 1-13

to be filed with this document in Case
County under Case No. 3507 H.D.
for it to be added for an record
reference to the fact of special
or the 1/4 1/2 1/2 1-13

I am sure you will find a copy of
the same in the Court of House as the
same is in the Court.

As nothing further can be done, I am

Very respectfully,
D. Clerk of the Court

per D. Clerk of the Court

1/4 1/2 1/2 1-13

Very respectfully,
D. Clerk of the Court

11
John P. Johnson
1000 E. Commercial St.
Albany, N.Y.
Barry 1 800 83313

May 13, 1968

Michael P. Tribe
Johnson & Associates
Attorneys At Law
615 H Street
P.O. Box 396
Bozart Idaho 83302-0396

RE: State v. State of Hawaii

Dear Michael: Note: You need to change your name when

This letter is to inform you that
I received an copy of the document in
support of the State's case in the
State of Hawaii under John P.
Johnson & Associates, Inc.
as your firm is listed as the
attorney for the State.

Very truly yours,

I believe you being just as ineffective as
Kurt Jensen was. I.A. is not grounds for withdrawal.
I was impressed with the
document, but I must inform you that,
I'm also clearly disappointed. (Concerned)
not in anything but a few things. 7

With I mean you no personal disrespect,
but I've clearly made it a point to you
time after time that I know that

I.C. 19-2444 - Ineffective assistance of Counsel is not
grounds for a new trial, but a post conviction
remedy for a wrongful conviction of the Court!!!

Please explain to me why ineffective assistance
is not a ground to the Court. !!!

This is NOT A Post Conviction !!!

From my limited understanding of
the law and numerous rulings by the
Courts of Indiana, they have repeatedly
denied your legal motions due to in-
effective assistance claims. This has to
be changed immediately!!!

What then is this your post conviction
of all the main points in my arguments?
This is NOT A Post Conviction !!!

What is it then that you post

conviction?

Note: Rule 34 I.C.K. says I can draw a negative note but
I can't draw (1) discrediting of counsel, (2) prejudicial to just
conviction. I'm confused here, really confused and nervous!

Counsel? (and is)
They have been ineffective to bring to
light rule violations and Federal
Code violations. Some of these dire
violations were not only his fault
but the Stobas also.

By my reading of your memo-
randum you are putting the blame
clearly only upon the shoulders of
Kurt Jensen. This is not a just conviction!
Jensen was not the only one to blame concerning.

I'm no scholar of the law and
I could be reading your memorandum
in mistake. If I am please forgive
this oversight. But if I am then
reading it correctly then this docu-
ment will do me no good in this court
or the Court of Appeals, because you
are the main and the only authority,
and your Court will deny me relief, on
these grounds because it doesn't like
my memorandum.

What does a good memorandum look like? I'm not
sure.

Note: Mike you did not add all my request, you are not
complaining my notions but insulting them. I need to
have what I'm fighting for. I'm facing a life sentence here.

Plans needs to be reconsidered and
brought to the Honors Attorney on
June 7th 2005, at our upcoming hearing,
as not only being Jussis fault but also
the Courts.

2. Failure to advise them of the
consequences . . .

While it could be said that Counsel
should have explained to me what he
was doing, This was his fault but
this Court was also in error not to
Advise me and Does not relieve the Court of
its obligation to thoroughly pursue
Assurance that the actual Kries was
he was doing. The record will show
that on 1-1-1. (p. 33, 34 - 12-22, 1-11)
the defender that had been was
on 1-1-1. (p. 33, 34 - 12-22, 1-11)
but a fight in fact that was I
would not have been in the
Kries for the 1-1-1. (p. 33, 34 - 12-22, 1-11)
to go on 1-1-1. (p. 33, 34 - 12-22, 1-11)

11/11/11

Why didn't you read the Adm. Est. v. State 13 Ed 558
in the psychology treatment on page 10-11. 149 B.3d 837

Plus, Court for years has been saying to
me. The court will always find that this
Court never advised me fully of what
rights I was entitled to. And that's
not Kent's fault but the
Court itself. This needs to be pointed
out to the Court, and its plain error

Page 4
You need to reward this argument-mike!
3. Failure to object to admissions of facts
T.T. (P. 134, 135, L. 23-25, 1-19).

Granted Kent may have been ineffective
he not intervening when I tried to
object. But this does not relieve
the Court's obligation to remember its
own ruling in this case. Just prior
to defendant taking the stand, the
Court ruled that the State could
not bring in exhibits, if such is.
This is clearly a fundamental and
dispositive issue. The Court's failure to
follow its own ruling is plain error.
(The Court's error is plain error.)

15th Feb. in the presence of some very distinguished
 ladies to the study of the "Supremacy of the King"

01 Nov 51 2006. 031000Z. 5101 143100 558, 149 0.21 533:
212.

2. I should like to know how far
you have reached. See you don't allow
it fault

J. Expense to Adm. Office included Jan. Feb.

Both C. d. Clarks found out their
objection. But they were not the
State to abide by the law.

Both these are under the same of course the road to the ground that is now on a lot of land but also the State and the Court.

Page 7

P. the first was dying of
 very severe disease of this
 character, and the second
 the same disease, but

1. *Phragmites australis* (Cav.) Trin. ex Steud.
 2. *Phragmites australis* (Cav.) Trin. ex Steud.
 3. *Phragmites australis* (Cav.) Trin. ex Steud.
 4. *Phragmites australis* (Cav.) Trin. ex Steud.
 5. *Phragmites australis* (Cav.) Trin. ex Steud.
 6. *Phragmites australis* (Cav.) Trin. ex Steud.
 7. *Phragmites australis* (Cav.) Trin. ex Steud.
 8. *Phragmites australis* (Cav.) Trin. ex Steud.
 9. *Phragmites australis* (Cav.) Trin. ex Steud.
 10. *Phragmites australis* (Cav.) Trin. ex Steud.

(The following is a summary of the facts for the Court.)
 I am not a law student. But I know that
 for the past year I have read the documents in
 this case for nothing because the facts
 are so clear that I am not even of sufficient age
 to be able to do so. I need to be assured that this
 Court is not going to read my
 arguments as to being ineffective
 assistance of counsel and thus by
 I am relieving the burden of the court
 of ever being in error in any way at all.
 This just can't happen in the
 This Court and the State's Attorney
 and Kent Johnson are professions 1/5
 in matters of law, and so are you!!!
 Please review your memorandum 5/14/08
 I only have 90 days of law and
 self study and I can see these
 errors, as plain as the sun shine.
 The not going to read or not being able to read
 from all the documents and I cannot be
 accused from such obvious errors
 and not being able to read the documents
 from the documents of the fact
 (see)

Notes on the meeting to Elder V. Smith, 200. I must
have written something to the court in 1957? I don't
know but I'll have to check the files.

I don't want to say I'm a
journalist nor do I want you to suspect
for any court business or interest.

I need for you to explain to
the Court that it was in error, not
only losing, and the state was in error too!

Another thing, when you returned
part of my file, I noticed that
Kurt Linsen did file for a continuance
of trial on Dec 24th 1966.
I need this brought up and argued. Big error!

On Dec 29th 1966, the Court, denied
the motion to continue why? It's
not part of my Table of contents
record, or on the record to the
Court. It appears to me it's why?
What did the Court rule, speed to trial issue?
I'm telling you you need to file this to
your court, to show the Court was
in clear error for denying motion
to continue. This was not to be
denied to me.

Note limits of our first report these mistakes
in our memorandum, you have a number to have
corrected. you have been at work 1 week right?

Answer to the Attorney at Law
Honorable Court in the 7th of June 1968

And finally, this is of major
importance, the Court also ruled on
T.T. (p. 145, 146, Lines 1-25, 1-25)
Regarding the press convictions. The
Court ruled the state could require
if I had press but it would not go
in to further circumstances of these convictions

The state attorney wanted to
know how far he could go. He was
told or warned the maximum sentence
on page 146 Lines 10-20. And just
minutes after that on page 164,
165, 166, 167, Lines 1-25 of all
of them the state decapitated
it's own state system. The
Court's ruling this was a very
coincidence. The state decapitated
the state system. The state
decapitated the state system. The
state decapitated the state system.

But don't think you're going to win this. It's not about the state and not the people.

in a major, ERROR. It was
presented in the name of the
people's republic. This (mistake) is
brought to the attention of the Court.

Mike you make me feel good
if I have questions or concerns to
not hesitate to let you know

and now you know. You
need to read the 1st of Sir

You write my name in the
book and I go to meet it before
6-7-8

I'm not arguing intellectual ass. I'm arguing errors!

You also need to add the

(change) ¹²⁻²⁴⁻⁰⁶ Court record. And the
Court of the Court of itself
totally disregarded, my case

You also have to add
(change)

From the Court of the Court
to the Court of the Court
and the Court of the Court
and the Court of the Court
and the Court of the Court

ROBINSON & ASSOCIATES

ATTORNEYS AT LAW

815 H STREET

P.O. BOX 315

BURLEY, IDAHO 83318-0315

AREA CODE 208
TELEPHONE 444-4444
FAX 444-4444

BRENT T. ROBINSON

KELLY ARTHUR ANTHON
MICHAEL P. TRIBE

May 21, 2008

Valentino Herrera
Mini-Cassia Criminal Justice Center
1415 Albion Avenue
Burley, Idaho 83318

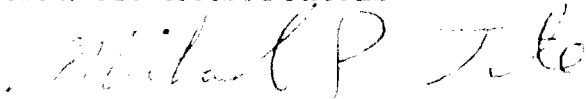
RE: State vs. Valentino Herrera

Dear Valentino:

Enclosed please find a copy of the Memorandum in Support of *Pro Se* Motions. I am providing this to you for your information and records. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

ROBINSON & ASSOCIATES


Michael P. Tribe

MPT:bcl
Enclosure

✓ H/c [unclear] [unclear]

000162

Siegel also argues that because John was not named as a prosecution witness until the day before trial, the district court should have granted a continuance to allow Siegel time to prepare a response to the testimony. The decision to grant or deny a continuance as a result of the late disclosure of a witness is committed to the discretion of the trial court. *State v. Byington*, 132 Idaho 589, 592-93, 977 P.2d 203, 206-07 (1999); *State v. Tapia*, 127 Idaho 249, 255, 899 P.2d 959, 965 (1995). The denial of such a motion will be disturbed on appeal only if it is shown that the tardiness of the disclosure so prejudiced the defendant's case preparation that the defendant was denied a fair trial. *Byington*, 132 Idaho at 592, 977 P.2d at 206; *Tapia*, 127 Idaho at 255, 899 P.2d at 965; *State v. Smoot*, 99 Idaho 855, 859, 590 P.2d 1001, 1005 (1978); *State v. Hawkins*, 131 Idaho 396, 405, 958 P.2d 22, 31 (Cl.App.1998). To

Page 542

show prejudice, "a defendant must show there is a reasonable probability that, but for the late disclosure of evidence, the result of the proceedings would have been different." *Tapia*, 127 Idaho at 255, 899 P.2d at 965.

Siegel did not meet this standard. First, because Siegel himself was the other party to the alleged telephone conversation about which John would testify, Siegel did not need an "investigation" about the content of the conversation. Siegel argues, however, that he needed investigation time to acquire evidence to discredit the allegations about misconduct with Kelly. This argument fails because nothing in the record indicates that information useful for Siegel's defense could have been acquired if he had been given additional time to investigate the allegations. A bare claim that additional investigation could have been conducted is insufficient to show prejudice. *Id.*; *Hawkins*, *supra*. We have previously noted that such a showing can seldom be made on the trial record alone, but will require post-trial proceedings. In *Hawkins*, we explained:

We recognize that it may be impossible for defendants [faced with late-disclosed evidence] to show actual prejudice from the trial record alone. This underscores the importance of taking appropriate post-trial steps to create the necessary record to support an appeal. Rather than relying solely on the trial record and asking this Court to speculate as to whether the defendant was prejudiced by the trial court's denial of a continuance or sanctions, the better practice is to move for a new trial in the district court, pursuant to I.C. § 19-2406(5) or (7), taking that opportunity to present to the trial court ... evidence that would demonstrate prejudice from the court's earlier denial of an adequate remedy for the State's untimely disclosure. Such a post-trial measure would not only allow development of the necessary record for appeal, but may obviate the need for an appeal by giving the trial court an opportunity to grant a new trial where prejudice can be demonstrated.

Hawkins, 131 Idaho at 406, 958 P.2d at 32. See also *State v. Pecor*, 132 Idaho 359, 364, 972 P.2d 737, 742 (Cl.App.1998). Because Siegel has not demonstrated prejudice, we will not disturb the trial court's denial of his request for a continuance.

B. Exclusion of Testimony from Defendant's Expert

Siegel's trial was originally scheduled for August 24, 1999, but it was continued on Siegel's motion to November 30. Siegel filed a second motion to continue on November 12. The motion was denied, but the trial was rescheduled to begin on December 1. On the first day of his trial, Siegel disclosed the subject matter of testimony that he would offer through a mental health professional. It was disclosed that the expert witness, James Ferguson, would testify that he had administered a test called the Sexual Adjustment Inventory (SAI) to evaluate Siegel and that based on the results of this test, Ferguson was of

Clark County Courthouse

I have been told that on the 23rd
day of May 2008 I signed a true
and correct copy of Letter to Mike
Vill 9/6 file 1-12 under the following:

Clerk of the District Court
Minnesota County Courthouse c/o
Hon. John Johnson
Resident Chambers
Rt 201 Tellico 53350

Clerk of the District Court
Asson County Courthouse
1457 Yorkland Avenue
Burlington Tellico 53353

7/23/08

John Johnson
Hon. John Johnson
1457 Yorkland Ave
Burlington Tellico 53353

1457 Yorkland Ave

Case No. 03-10140

DOMESTIC COURT
OF HONOLULU

FILE

2003

(Honorable J. Melanson)

2003 MAY 28 AM 8:49

Dear Clerk of the Court: *Ag*

I would please put my Affidavit & 6
(Defendants request to Counsel) to be filed
in this District for a ruling on by His
Honorable J. Melanson on 6-1-03.

If available, please provide the Jura Court
prosecutor's office with a copy to 2000
State of Hawaii.

In reading of 1418 above, in Bering, H.
3314, please keep in mind to the

to the court for the

Handwritten signature

pc: Blaine Cannon
Michael Tribe
Judge Melanson

000105

Valentino Herrera 19289
Minister of Soc. Sec. Case
1913 Albin Turner
Bulky File 8338

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CASSIA

State of Idaho,

-VS-

Valentino Herrera

CASE NO: CR-06-3507 *D

AFFIDAVIT OF Defendants
Request to Counsel that
Additions and modifications
to memorandum in support
be made Prior to 6-9-08
Hearings in Cassia County
Motion for New Trial et...

STATE OF IDAHO } ss
County of Cassia }

Valentino Herrera, after first being duly sworn
upon his oath, deposes and says as follows:

I am the defendant in the above entitled
matter, Request to Counsel, to add or modify
present memorandum in support and motion, in
the instant Court on 6-9-08, before the

K.H. Zeile

000186

Defendants request to Counsel 1-6

Honorable Judge John Johnson.

2. I make this Affidavit to certify

3. Defendant asks Counsel to bring to the attention of the Court and current counsel as to my wish to the addition and modification to the memorandum before this Honorable Court.

3. Defendant asks Counsel to bring to the attention of the Court, that, Court was

The attention of the Court, that Court was in error on its denial to grant a continuance filed by prior Counsel Kent D. Jenson, on Dec 26th 2009. This motion was ruled on, and denied, on the 29th of Dec, 2009, because of speedy trial concerns by Court. 11. Court was mistaken, as to the

data, e.g. having in (approx.) a steady flow, violating the students' steady flow, but was in error

S. Defendant tried to break to the

Attention of His Honorable Court, this important
matter, on May 17th 2006, but I don't know
the proper procedure, and told to be quiet.

Q-3 1997 9 4 1997 9 17 1997 9 17 1997 9 17



Notary Seal
000158
-3-6

1. Defendant did not mean to
intentionally disrupt these current court
proceedings. Defendant merely wanted it
noted for the record that he wants for
this honorable court to rule on its denial
of continuing trial as to this court's
reversible error, on Dec 20th 2008.
7. Defendant does not mistake
at this time that he is disappointed
with counsel. Defendant only has the
sincerest, and humblest respect for
counsel and this honorable court.
8 Defendant prays this matter be dealt
with on the June 9th 2008 hearing in class.
Further your Affiant sayath naught
Dated this 20th day of June 2008

Subscribed and sworn to before me this 20th day of June 2008
Notary
Shelley Reincke

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] Although paragraph (c) does not require that the client's informed consent to a limited representation be in writing, it is encouraged. See Rule 1.0(e) for the definition of "informed consent."

[9] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[10] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. See Rule 4.1.

[12] Where the client is fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful

enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience to the statute or regulation or of the interpretation placed upon it by governmental authorities.

[14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Commentary

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's workload must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

RULE 1.4: COMMUNICATION

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; including a request for an accounting as required by Rule 1.5(f); and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Commentary

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations - depending on both the importance of the action under consideration and the feasibility of consulting with the client - this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged. Regular communication also requires a lawyer to

make an accounting for monies received from or on the client's behalf. That duty is more specifically set forth in Rule 1.5(f).

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See Rule 1.14. When the client is an organization or group, it is often impossible to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

RULE 1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;

(Signature of J. M. ...)

I hereby certify that on the _____ day of _____
I made a true and correct copy of:

Defendants Request to Counsel Affidavit 1-6

With the Minnesota Criminal Justice Center mail system
for processing to the U.S. mail system addressed to:

Chief of the FBI Laboratory / Clerk of the Federal Court

Minnesota County Courthouse / Cassia County Courthouse

1459 Overland Avenue

Burley Idaho 83318

Rupert Idaho 83350

Residents Chambers

Hon. John Melanson

Mike R. Tins

Attorney at Law

PO Box 344

Rupert Idaho 83350-0344

5/24/08

(Signature)

1113 Main St

Burley ID 83318

Defendants Request to Counsel Affidavit 1-6

Case No 06-007 *D
June and 200

Class County Courthouse
Dear Clerk of the Court

2008 JUN -3 AM 9:45

Enclosed please find my memorandum of
Law and Motion, to be filed in
Court under Case No: CR-06-3507 *D

The purpose of this memorandum is to
supplement the memorandum filed by Counsel
Miky Tribe on or about the 14th of May 2008.

Please, as I am short of funds, please
provide the state's attorney with a copy
of this memorandum.

Thank you for your timely assistance in this
matter.

Please keep me informed as to a hearing date
or ruling on this matter.

I'm residing in the Class County Jail 1415 Alameda
Berkeley Id 93308

As always you have my gratitude.

Very truly
yours
J. H. H. H.

000172

COPY

VALENTINO HERRERA
I.M.S.I. / A-BIK.
P.O. Box 51
Boise, Idaho. 83707

Defendant Pro Se

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,
Plaintiff,

Vs-

VALENTINO HERRERA,
Defendant.

Case No. CR-06-3507*D

MEMORANDUM OF LAW
AND CORRECTION

Comes now, the above named defendant, who has
Filed a "MOTION FOR NEW TRIAL, Striking OF the Pre-Sentence
Addendum, Striking OF Psychological Examination and Petition For NEW
Examination, Motion to Strike Persistent Violator Charge, Motion
For Appointment OF NEW Counsel, Motion to withdraw Plea OF guilty,
Motion For Bail Pending Appeal, Etc. Etc.

Defendant ask the Court to attach this Memorandum/Correction
to the above stated motion Filed on or about DECEMBER 17, 2007
in accordance with the (mailbox) rule.

Defendant ask the Court to consider all Facts, Corrections and
Arguments Presented herein on an Equal basis as those and with those
Presented in the afore stated motion.

The Memorandum in Support of Pro Se Motions, submitted by Current Counsel, Mike Tribe, on or about the 12th of May, 2007, and filed in the Fifth District Court in Cassia County is incomplete, and or misquoted.

1. On page 3 of Memo in Support, Current Counsel Mike Tribe informs this Honorable Court that prior Counsel, Kurt Jensen;

1. Failure to Advise Court and Herrera of Lack of Speedy trial Issue. . .

Current Counsel Mike Tribe has inadvertently forgot to bring to the Court's attention that this is a fundamental tenet of American Jurisprudence that any Sitting Court should be well aware of.

Defendant mentions that he was prejudiced by this reversible error and further prejudiced in the Court by its denial to ⁽⁴⁾ continuance filed by prior Counsel on Dec 26th 2006

and denied by this Honorable Court on the 29th of Dec. 2006, for reasons being a speedy trial concern. These for Court committed reversible error and a new trial should be granted to Herrera.

2. On Page 4 of Memo in Support, Current Counsel Mike Tribe informs this Honorable Court that prior Counsel, Kent Larsen;

3. Failure to Object to Admission of Exhibits . . .

Current Counsel Mike Tribe has inadvertently forgot to bring to the Court's attention that the State Attorney Blain Cannon had just prior to defendant taking the stand, State Attorney Blain Cannon stipulated on (H.A. p. 196, Li. 10-20) not to mention nature or circumstances of defendant's past prior conviction. State's Attorney Blaine

Cannon lied to this Honorable Court and to defendant not to bring up any circumstance to the jury, by bringing in exhibits 4[#] & 6[#] over objection by defendant.

Further more defendant Herrera maintains that this Honorable Court committed reversible error by denying Herrera to object, and allowing the State to force Herrera to read exhibits 4[#] & 6[#] which Court had already ruled prior to Herrera taking the Stand on (Ht. p. 135, Li. 10-15) the Court ruled State could not bring those documents in. State also admitted that (Ht. p. 135, Li. 16-18) it wasn't important enough to bring victim back to establish proper foundation.

Herrera asserts that these exhibits prejudiced the minds of the jury and jury rendered a guilty verdict but this Court's reversible error, and should grant a new trial.

Motion - memo-4

0001170

3. On page 8 of Memo in Support
Current Counsel Mike Tribe informs this
Honorable Court that;

f. No Job Qualifications for Bailiff
While victim was Employed as Bailiff...

Current Counsel Mike Tribe has inadvertently
sought to bring to the Court's attention that
the Court used Job Qualification Duties
written by the hand of the victim himself.

The Court committed reversible error by
relying heavily upon this document (T.T. p. 18,
Li. 12-22), provisions in Exhibit A. This
particular Exhibit was not in effect until
the departure of the found as Bailiff in
Cassia, (T.T. p. 29, Li. 9-21) Q. Mr. Garrett you
were originally hired as a bailiff, weren't you. A. That's
what the check stub shows ex. 1. Q. Was bailiff?
A. Right. Q. Did you ever review with the Sheriff's
Department the job summary as the bailiff? A. To
be honest, I was Cassia county's very first bailiff.

Motion-Memo-5

000122

And they didn't have any kind of summary. I ended up writing the job qualifications for the next bailiff that would be coming through.

Herrera asserts that Alan Barrett was not under any job duties that the Court used to dismiss Herrera's motion to dismiss.

By plain re-view of the trial transcripts Herrera maintains by the testimony of the victim himself, he was subjected to no official police duties. Courts claims in its dismissal of motion to dismiss. Court committed reversible error and should grant Herrera a new trial to explore this document and victims official status further.

4. On page 8, of Memo in Support Current Counsel Mike Tribe to forms 'this' Honorable Court that;

9. Court should have been Loyal and Persevered to Idaho Criminal Rule 25(b) ...

motion-memo-12

General Counsel Mark Line has independently
forgot to bring to the Court's attention that;

According to the thirty-seventh Annual Review
of Criminal Procedure, Distributed by the

Georgetown Law Journal 2007, page 563 sub. 1749.
Though the test for actual or apparent bias is applied
differently, the Circuit Courts frequently phrase it
differently. See, e.g., 441 F.3d 44, 52
(1st Cir 2006) (whether "an objective, reasonable member of
the public, fully informed of all the relevant facts, would
fairly question the trial judges impartiality" (quoting *In re U.S.*
158 F.3d 26, 31 (1st Cir 1998)); (Clemens v. U.S. Dist.
Ct. Dist. of Cal., 428 F.3d 1175, 1178 (9th Cir. 2005)
(Whether "a reasonable person, with knowledge of all facts would
conclude that the judges impartiality might reasonably be
questioned" (quoting *Herrington v. County of Sonoma*,
834 F.2d 1488, 1502 (9th Cir 1983)))

Heverera maintains that had jury
been aware to the relationship he would
have doubt as to the Court's bias

Motion - Memo - 1

000000

Mabton - Memo - 3

Held: On grant of defendants motion for
renewal the Supreme Court held that

(143 Idaho 558, 149 P.3d 833)

State of Id. Respondent.

Krispen Estrada, Petitioner - Appellant
v.
Boise, September 2006 term.
Our own Idaho Supreme Court

Current Counsel Mike Lirio has inadvertently
forgot to bring to the Court's attention that

h. Motion to Strike or Suppress Psycho-
logical Examination...

5. On page 10 of Memo in Support

Prejudice of Court towards Hester
Hester asserts that this is also
reversible error committed by court and
should grant Hester a new trial.

(Current Journal: This has indicated
direct to going to the Court's attention that)

d. Failure to Adheressor Included Jury Instruction

10. On Page 5 in Memo in Support

Penetration 82.2%

Wheatsara ask the court to suppress the evaluation submitted to the court and the P.S.I. Report that relies heavily on this.

Revised and rounded for presentation

(2) trial counsel's failure to advise defendant of his Fifth Amendment privilege to refuse to submit such evaluation for purposes of sentencing constituted ineffective assistance

such exons, and

(1) a court ordered psychosexual evaluation of a defendant for purposes of sentencing constitutes a "critical stage" of litigation, and thus the defendant has a Sixth Amendment right to counsel regarding decision of whether to submit to

Former Counsel Kent Sosen deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding.

U.S. v. Russell, 221 F.3d 1615, 1621-22

(4th Cir 2000) (Counsel's failure to confirm status of 2 of defendant's 3 prior convictions, after defendant informed Counsel that convictions were invalid, was prejudicial because defendant's credibility was central to government's case);

U.S. v. Altershin 433 F.3d 1148, 1162 (9th Cir 2006)

(Counsel's refusal of materiality jury instruction was prejudicial because it "prevented the jury from considering the very theory of the case on which the attorney was relying");

Herrera maintains that prior Counsel denied him of a fair defense and was deficient and thus prejudiced Herrera of a fair trial and this Honorable Court should grant Herrera a new trial this reversible error.

NOT on-memo-10

000102

7. On page 15 of Memo in Support
Vs motion to Withdraw Plea of Guilty

Current Counsel Mike Tribe has inadvertently
forgot to bring to this Honorable Court Attention
that:

Herrera asks this Court to allow him
to withdraw Stipulation to the persistent
violation charge, and not withdraw a guilty plea
because Herrera never pled guilty to the
persistent violation status, but Counsel misadvised
Herrera to stipulate to the violation status
and was ineffective to do this.

Both Counsel and/or the Court should not have
allowed a stipulation on such an important issue,
rather it should have, outside of the presence of
the jury, allowed Herrera to plea to the persistent
violation charge only after explaining to Herrera what
he was waiving and asked if such rights had been stip-
ulated to him by his attorney.

Motion - Memo - 11

000183

Herrera asserts that counsel or the Court fully advised him of his full rights and Herrera was prejudiced by counsel's deficient performance and the Court committed reversible error by not fully informing Herrera of his Constitutional right to a trial by the President's right to a trial and asks this Court for a new trial to rectify this error.

Conclusion

For the following reasons which have detailed ask the Honorable Court for a reversal for these reasons presented herein

Dated 6/2/08

By: Valentino Herrera

Valentino Herrera
Certificate of Service

I hereby certify that on the 2nd day of June 2008 I mailed to those below the Form 308B, via Minnesota Jail mail system:

Minnesota County District Clerk
Hon. John Melanson
Resident Chambers
Rupert ID. 83350

Cassia County Court Clerk
1459 Overland Avenue
Burley ID. 83318

By: Valentino Herrera

Defendant Pro Se

9-10-11

4377000 01.1

✓ The you for this from 1957-1960

1. Reason for the removal of 1415 Alton Road, 1933.

And of ratings in the above case number.

These in form of the scheduled court dates

offered with a copy as I am without means.

Applicants please provide the processors

in the above cases numbers.

Enclosed please find my letter to write to be filed in this Honorable Court for record purposes to the Supreme Court of Idaho

Learn to play the piano

Case No. CR-73-3507-D

high way

2008 JUN -5 PM 1:37

7-10-68

(Issues)
(for)
(6-7-8)

1)

Case NO. E.R. 06-3507 *D June 4th 2008

Dear, Yelk Tribe;

Important!!! Get this done!!!
prejudiced by denial of continuance.

1. Herrera's Record of trial motions is incomplete. Herrera needs the copy and the decision of the Court's denial of Kent Senses motion on Dec 24th, 2006, this needs to be taken care of today right now before any decisions.

(1997) prejudiced by use of invalid convictions. (1998)
2. If state agrees that the persistent violator charge be dismissed, fine, but the Court still needs to rule on the validity issue because if the convictions are invalid, the Court should grant a new trial because invalid prior convictions were used to impeach Herrera in trial and prejudiced Herrera in the eyes of the jury. I.R.E. Convictions were also used by state without prior notice (Crim. Rule 1.09 (b))

3. Court needs to rule on erroneous denial of continuance and its prejudicial ruling from Dec. 29 2006, and the ^(above) invalid convictions.

4. Court needs to be notified that any trial application is not filed without merit, this not for purposes of delay of punishment. My case is "factually debatable" and substantial questions of law likely to result in reversal of Herrera's conviction. US v.

D. Berman, 151 F.3d 124 (2d Cir. 1999), 11-1 Cir. 11, 33 F.3d 1308, (5th Cir. 1994)

V.H. C.C. file, letter to Mike 1 of 6 00000000

5. you'd also like to briefly mention that the late ^{P.R.} Mark B. Carlson, who was disqualified and stepped down on 10-25-01. Thus Herrera's speedy trial deadline officially would be 4-25-02, So trial court was never in danger of violating Herrera's speedy trial rights but did actually infringe his rights and caused him irreparable prejudice by forcing his prior counsel to subject a client in magistrate court to plead guilty or force Herrera to waive speedy trial rights thus relieving the Court of having to move or continue Herrera's trial date on Jan 3rd 2002 that was legally never even close to being in jeopardy of a speedy trial issue or time violation. and placed undue hardship on Kurt Jensen

6. make sure every document I filed including the letters I wrote to you requesting to you that you leave nothing of my issues out of your memorandum, but you did. Now you need to bring to the Court's attention that I can sit in jail another 12 months regarding this for failing to be in prison. It doesn't matter if it is 5 years or 30 years. I was not paid as much as how you drew them up.

V. H. C. file, letter to M. B. 2016

000187

7. You need to return to me my complete file I lent to you on all my material I filed in the District Court. Material that you didn't even bring up in your memorandum you submitted to the Court saying that your memorandum compliments my work. Your memorandum doesn't even mention my memorandum and correction of law about the States misconduct or my argument submitting a case law as far back as 1903. Or my case law on Shepard or Knae. As I told you from the beginning ... I only get one shot at this. I'm trying to create a record for the Court of Appeals to rule on instead of second guessing a game of "he said they said" or "they said he said". It's going to be very hard for me to prove to the higher courts I tried to get my arguments in front of the Courts if I don't have proof because you won't return to me my legal work. I'm reasoning for my wife's life here Mike, my mother is living my wife and son are alone and need help. My mother in law is in a sick, V.H. C.C. file, Letter to Mike 3- of - 12 000288

4)

but nobody's cares. nobody, But Care Mike I really care
~~this never to be~~ never

8 Also for the record this needs to be stated,
State Attorney Blane Cannon never filed, never
verbally asked or used sign language used by
the deaf, or any other method known, or used by
modern intelligence to communicate with another,
did the State Attorney, ever bring to the
Attention of this Honorable Court its desire
to assign thereon on the Amended Information
filed by the state on 9.29.06. The Court
took it upon itself to motion for the state itself,
but the state never asked for. Thus this Courts plain
error prejudiced thereon's rights to due process.

9. And finally, thank you Mike, thank you for
everything.

6/14/08

PS.

Mike there are so many errors
in this trial its plain I
need a new guy. If you
were the one facing a
potential life or even 5
years, you would definitely
want to get every error
in this case I had when
the judge or the state attorney
was incorrect. But I do expect
them to pay as the rules expect
with states this high those states
just happen to be my life, Thank you for all
V.H c.e. Dale, letter to Mike 4-6 000183

By:



June 3rd. 2008



Idaho Statutes

TITLE 1 COURTS AND COURT OFFICIALS CHAPTER 2 SUPREME COURT

1-210. BAILIFF, CRIER AND MESSENGER -- APPOINTMENT AND COMPENSATION. The court shall have power to appoint a bailiff, crier and messenger when such officers are necessary whose duties shall be fixed by the court, and whose compensation for all services rendered to the state of Idaho shall be fixed by the court and certified to the state controller, and payable as provided by law.

The Idaho Code is made available on the Internet by the Idaho Legislature as a public service. This Internet version of the Idaho Code may not be used for commercial purposes, nor may this database be published or repackaged for commercial sale without express written permission.

Search the Idaho Statutes

Available Reference: *Search Instructions.*

The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I.C. § 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.

Mike the Plain language of the above referenced statute clearly define the the court is obligated to fix the duties of its bailiff, crier, and messenger, and not that of the outgoing bailiff. The alleged victim Alan Garrett wrote the job duties. And the Court is in error to allow duties written by the victim to restrain a conviction on me. Cassia County definitely has links in the judicial system, but ^(C) should not be held responsible for its institutional but unfair way its handling this case for the love and loyalty of a former prosecutor that has gone from bad to worse. I did mention to you that the alleged victim was Paroled from Prison but was convicted in Ada County in December 2007 for yet another felony out. I was told by someone from the Court a friend he was in the next 10 straight years in Prison, that's to bad. And class in V.H.C.C. files. Letter to Mike 3 of 6 000120

5)

Certificate of Mailing

I hereby certify that on the 4th Day of June 2004
I mailed a true, correct copy via (Cassia County) mail system to:
U.S. Mail System: to: Jail

Idaho County District Court
Idaho County Court House 40
Hon. John Melanson
Residents Chambers
Rupert Idaho 83350

Cassia County Court House
District Clerk's Office
1459 Overland Avenue
Burley Id. 83318

Michael P. Tribe
Attorney At Law
P.O. Box 3916
Rupert Id. 83350

Dated 6/4/04

By: Valentinas Herrera

V.H. C.C. file, letter to Mike 6 of 6

2003 JUN -9 PM 2: 25

1 **ALFRED E. BARRUS (ISB #1704)**
PROSECUTING ATTORNEY
2 **DOUGLAS G. ABENROTH (ISB #7181)**
DEPUTY PROSECUTING ATTORNEY
3 **BLAINE P. CANNON (ISB #5575)**
Deputy Prosecuting Attorney
Cassia County, Idaho
Post Office Box 7
Burley, Idaho 83318
Telephone: (208) 878-0419
Facsimile: (208) 878-2924

6 Attorneys for the State of Idaho

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 **STATE OF IDAHO,**

Case No. CR-2006-3507*D

11 Plaintiff,

12 vs.

**STATE'S MEMORANDUM
OPPOSING PRO SE MOTIONS**

13 **VALENTINO ALEX HERRERA,**

14 Defendant,
15 _____

16 **COMES NOW** the State of Idaho, plaintiff in the above-entitled matter, by
17 and through Blaine Cannon, Cassia County Deputy Prosecuting Attorney, and hereby submits
18 the following memorandum:

19 **Motion for New Trial**

20 According to ICR 34 and Idaho Code Section 19-2406 there are only limited grounds
21 upon which a defendant may seek a new trial. The defendant, in this case, seeks a new trial
22 for several reasons, including: 1) the Court's failure to rule on a motion to disqualify before
23 considering other motions; 2) ineffective assistance of counsel; 3) failure to object to
24 admission of felony convictions; 4) failure to properly instruct jury on lesser included
25 offenses; 5) prosecutorial misconduct in closing argument; 6) the victim was not a protected
26 person under the "battery on an officer" statute; and 7) The Court should have been
27 disqualified pursuant to Idaho Criminal Rule 25(b).
28

1 Motions for new trial must be made pursuant to ICR 34 and Idaho Code Section 19-
2 2406. *State v. Cantu*, 129 Idaho 673, 931 P.2d 1191 (1997). There are no grounds available
3 to the defendant to seek a new trial, except as delineated in I.C. 19-2406. *Id.* None of the
4 grounds set forth by the defendant in this case can reasonably be construed as being
5 authorized by I.C. 19-2406, except perhaps the defendant's argument that the victim did not
6 qualify as "peace officer" as contemplated by the statute in question. This might be
7 considered an argument that the "verdict is contrary to law or evidence." I.C. 19-2406(6).
8 However, the defendant would have been required to file such motion either 14 days after the
9 verdict of guilty or within 14 days of sentencing. ICR 34. The defendant was late under
10 either standard.

11 A claim of inadequate trial counsel is not grounds for new trial. *State v. Roberts*, 129
12 Idaho 194, 923 P.2d 439 (1996), cert. denied, 519 U.S. 1118, 117 S.Ct. 964, 136 L.Ed.2d 849
13 (1997). Such claims are appropriately brought in a petition for post-conviction relief. *Id.*

14 Allegations of prosecutorial misconduct are not grounds for a new trial. *State v.*
15 *Jones*, 127 Idaho 478, 903 P.2d 67 (1995); *State v. Page*, 135 Idaho 214, 16 P.3d 890 (2000).
16 Such claims should be raised on direct appeal instead. Most of the claims raised by the
17 defendant in asking for a new trial are claims that should either be addressed on appeal or
18 through post-conviction relief.

19 **Motion to Strike or Suppress Psychological Evaluation**

20 This is not the proper forum or venue for this issue to be considered. If the defendant
21 objected to the report at sentencing, he may address that issue in his direct appeal. *State v.*
22 *Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982).

23 **Motion to Strike Persistent Violator Charge**

24 The defendant cites no authority that would allow this Court to grant any relief at this
25 stage of the proceedings with respect to his request that the Persistent Violator Charge be
26 stricken. To the extent the Persistent Violator conviction was taken in error, that is an issue
27 that may be addressed on appeal.
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CERTIFICATE OF MAILING

I hereby certify that on this 1st day of June, 2008, I served a copy of the within and foregoing State's Memorandum upon:

Michael Tribe
Attorney at Law

by hand delivering a copy thereof to him.

Blaine P. Cannon


Deputy Prosecuting Attorney

2008 JUN -9 PM 3:44

CLERK: TARA GUNDERSON

Date: 6/9/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 03:23 PM

Minutes Report

Page: 1 of 3

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Pending Motions / Sentencing	Minutes date:	06/09/2008
Assigned judge:	John Melanson	Start time:	02:32 PM
Court reporter:	Maureen Newton	End time:	02:32 PM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	Blaine Cannon		
Defense attorney:	Michael P Tribe		

Tape Counter: 241 The defendant is present and is in custody.

Mike Tribe is present on behalf of the defendant.

Blaine Cannon is present on behalf of the State of Idaho.

The Court reviews the defendant's motions:

- Motion for New Trial
- Motion to Strike or Suppress the Psychological Examination
- Motion to Strike Persistent Violator
- Motion for Bail pending appeal
- Motion to Withdraw Guilty Plea

Tape Counter: 242 Mike Tribe addresses the Court; argues Defendant's Motion for New Trial; cites considerations (stipulation re: persistent violator; exhibits admitted at trial # 4 & 6; admittance of evidence more than 10 years old; failure to fully instruct on the elements of battery (instruction # 13); reversible error by the State in its closing argument of the Trial; job description/qualification of the Cassia County bailiff.

Tape Counter: 247 Mike Tribe addresses the Court; argues the defendant's Motion to Strike Persistent Violator.

Tape Counter: 300 Mike Tribe addresses the Court; argues the defendant's Motion to Strike or Suppress the Psychological Examination as contained in the PSI Report; cites considerations.

Tape Counter: 304 Mike Tribe addresses the Court; argues defendant's Motion re: Persistent Violator; cites considerations.

Tape Counter: 307 Mike Tribe addresses the Court re: Defendant's Motion for Bail pending appeal; cites considerations.

Date: 6/9/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 03:23 PM

Minutes Report

Page 2 of 3

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 308	Mike Tribe addresses the Court; argues the defendant's Motion to Withdraw the Stipulation re: persistent violator; cites considerations.
Tape Counter: 310	Mike Tribe addresses the Court re: Defendant's Motion to Continue Trial filed on December 26.
Tape Counter: 312	The Court has no questions of Counsel at this time.
Tape Counter: 312	Blaine Cannon addresses the Court; objects to the defendant's Motion for New Trial; cites considerations.
Tape Counter: 316	Blaine Cannon objects to the defendant's Motion to Strike and/or Suppress the Psychological Examination; cites considerations.
	Blaine Cannon objects to the defendant's Motion to Strike the Persist Violator.
	Blaine Cannon objects to the defendant's Motion for Bail pending appeal; cites considerations.
Tape Counter: 317	Blaine Cannon objects to the defendant's Motion to withdraw the Stipulation re: Persistent Violator; cites considerations.
Tape Counter: 320	Mike Tribe addresses the Court; reviews the fundamental motivation for the defendant's motions; cites considerations.
	Mike Tribe addresses the Court; reviews rule 34 & 19-2406.
Tape Counter: 323	Mike Tribe addresses the Court; reviews its' argument re: trial exhibits 4 & 6.
Tape Counter: 324	Mike Tribe reviews the relief the defendant is seeking with its argument re: psychological examination.
Tape Counter: 324	The Court questions Counsel re: defendant's withdrawal of pending motions at the sentencing hearing.
Tape Counter: 328	Nothing further from Counsel.
	The Court takes these matters under advisement.

Date: 6/9/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 03:23 PM

Minutes Report

Page 3 of 3

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 329

Mike Tribe addresses the Court; cites the defendant requests a moment to address the defendant.

The Court denies that request.

Tape Counter: 330

Mike Tribe addresses the Court.

Tape Counter: 330

Hearing concludes.

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2008 JUL 23 PM 3:09

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant

Case No.: CR-2006-3507

**MEMORANDUM DECISION AND ORDER
ON DEFENDANT'S POST-TRIAL
MOTIONS**

A hearing on the defendant's post-trial motions was held in open court on June 9, 2008. The defendant, Valentino Alex Herrera, was present and was represented by Mr. Michael P. Tribe. The state was represented by Mr. Blaine P. Cannon. At the conclusion of the hearing the court took the motions under advisement. Having considered the motions, the memoranda and the file in this matter, the court now enters the following:

MEMORANDUM DECISION

1. Facts and Procedural History.

On July 19, 2006, Valentino Alex Herrera ("Herrera" or "defendant") was charged by Information with Battery on an Officer, a violation of I.C. §§18-915(d) and 18-903, a felony. It was alleged that Herrera committed battery upon Alan Garrett and that the battery was committed because of Mr. Garrett's former status as a law enforcement officer. An arraignment

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was held on August 3, 2006 and on August 24, 2006 Herrera pled not guilty. An order was entered on September 21, 2006 setting the case for trial on October 25, 2006. An Amended Information was filed on September 29, 2006 adding Part II to the Information which alleged a persistent violator enhancement pursuant to I.C. 19-2514 based upon three prior felony convictions which were set forth in the Amended Information. No motion to amend accompanied the Amended Information. No arraignment was immediately held on the Amended Information. On October 19, 2006, the defendant filed a *Motion to Dismiss* asserting that Alan Garrett was a Bailiff and not a "peace officer, sheriff or police officer." That motion was set for hearing before Judge Monte Carlson on October 20, 2006 but before ruling on the motion Judge Carlson disqualified himself from hearing the case. The case was then assigned to this court and the trial was vacated. The trial was then re-set to commence on January 3, 2008. On December 18, 2008, the *Motion to Dismiss* was heard and the court ruled from the bench, denying the motion based upon a finding that Mr. Garrett had been a peace officer prior to the battery. On December 26, 2006, defense counsel filed a *Motion to Continue* asserting that he had another matter scheduled in Power county on the date trial was to begin. That motion was heard on December 29, 2006 and was denied. On the morning of trial, the defendant, through his attorney, filed a *Motion to Dismiss Part II of the Amend the [sic] Complaint and Motion to Disqualify Judge*.¹ The motion actually referred to Part II of the *Amended Information* which alleged the prior felony charges under I.C. §19-2514. These motions were heard by the court in chambers on the record with the defendant and his attorney present. It appears from the record that the court denied the motion to

¹ Herrera's Motion to Disqualify was based upon his allegation that this court has or had a relationship with the victim in this case, Alan Garrett, who had been a bailiff in Cassia County. There is no basis in fact for this motion. Mr. Garrett was a Bailiff in Cassia County from 1989 to "about 2000, 2001" *Transcript*, Preliminary Hearing, July 14, 2006, p. 7.) The undersigned was appointed district judge in Minidoka County effective January 1, 2000. As I explained when ruling on the motion, I have no recollection of Mr. Garrett and, as anticipated, I did not recognize him when he entered the courtroom to testify. I was occasionally assigned to hear cases in Cassia County when I was a district judge and very seldom was assigned to hear cases in Cassia County when I was a magistrate in Lincoln County before becoming a district judge. If Mr. Garrett was a Bailiff in Cassia County when I was there I do not remember him.

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dismiss before denying the motion to disqualify judge. This court also granted the state's motion to amend the Information to add the persistent violator allegations. Following these rulings the court arraigned the defendant on the Amended Information and the case proceeded to trial. The Jury found Herrera guilty, answering the verdict interrogatories as follows:

Question No. 1: Is Valentino Herrera guilty or not guilty of battery?

Answer: Guilty.

Question No. 2: At anytime prior to (before) the offense was Alan Garrett a peace officer, sheriff or police officer?

Answer: Yes.

Question No. 3: Did Valentino Alex Herrera commit the battery because of Alan Garrett's former status as a peace officer, sheriff or police officer?

Answer: Yes.

After this verdict was returned, Herrera stipulated to the prior offenses forming the basis for the I.C. §19-2514 enhancement. The court then revoked bail and ordered a presentence investigation report. At defense counsel's request, the court also ordered a drug and alcohol evaluation and a psychological evaluation at county expense. The matter was then set for sentencing on April 16, 2007. On April 13, Herrera, through his attorney, filed a *Motion for New Trial, Striking of the Presentence Addendum, Striking of Psychological Examination and Petition for New Examination, Motion to Strike Persistent Violator Charge*. However, on the date of sentencing, Herrera withdrew these motions on the record and the court proceeded with sentencing

On April 16, 2007, this court sentenced Herrera to five years determinate on the battery charge and five years determinate and twenty years indeterminate on the persistent violator enhancement with the sentences to be consecutive. A Judgment of Conviction and Order of Commitment was entered on April 25, 2007. Herrera then filed a *pro se* Rule 35, I.C.R motion and requested new counsel. Another attorney was appointed for Herrera and, after a requested

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continuance, the Rule 35 motion was scheduled on August 31, 2007. The parties stipulated to continue that hearing and it was reset on November 1, 2007. After hearing the motion, the court entered a *Memorandum Decision and Order on Motion to Reconsider Sentence, I.C.R. 35*, granting the motion and finding that the sentence was not lawful because under I.C. §19-2514 the court must impose one sentence—not two separate sentences—for the underlying charge and the enhancement. *Lopez v. State*, 108 Idaho 394, 700 P.2d 16 (1985). The court ordered that the defendant be returned to court for resentencing. Sentencing was then scheduled on January 9, 2008. However, on December 21, 2007 the defendant filed a *pro se Motion for New Trial, Striking of Presentence Addendum, Striking of Psychological Examination and Petition for New Examination, Motion to Strike Persistent Violator Charge, Motion for Appointment of New Counsel, Motion to Withdraw Guilty Plea, Motion for Bail Pending Appeal, etc., etc.* These motions were then set for hearing on January 8, 2008. New counsel was then appointed for Herrera and the *pro se* motions and the sentencing were reset on February 11, 2008 but that hearing was continued and reset on March 14, 2008. At that hearing the newly appointed attorney noted a conflict in representing Herrera so yet another attorney was appointed—Herrera's present attorney, Mr. Michael Tribe. A briefing schedule was ordered and both parties have submitted memoranda addressing the following issues raised by the *pro se* motion:

1. Motion for New Trial.
- 2 Motion to Strike or Suppress Psychological Examination.
3. Motion to Strike Persistent Violator enhancement.
4. Motion for Bail Pending Appeal.
5. Motion to Withdraw Guilty Plea.

The court will address the motions separately.

2. DECISION.

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a. Motion for New Trial.

A decision of whether to grant a new trial is committed to the discretion of the trial court. *State v. Priest*, 128 Idaho 6, 15, 909 P.2d 624, 633 (Ct.App.1995). I.C. 19-2406 is an "all inclusive list of the instances where that discretion may be exercised." *State v. Lopez*, 139 Idaho 256, 258, 77 P.3d 124, 126 (Ct.App.2003). In other words, I.C. §19-2406 provides the only grounds upon which a new trial may be granted. I.C. §19-2426 provides:

When a verdict has been rendered against the defendant the court may, upon his application, grant a new trial in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony.
2. When the jury has received any evidence out of court other than that resulting from a view of the premises.
3. When the jury has separated without leave of the court after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.
4. When the verdict has been decided by lot or by any means other than a fair expression of opinion on the part of all the jurors.
5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.
6. When the verdict is contrary to law or evidence.
7. When new evidence is discovered material to the defendant, and which he could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing in support thereof the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

Herrera seeks a new trial on the following grounds:

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1. The court failed to rule on the motion to disqualify before ruling on the motion to dismiss.
2. Ineffective assistance of counsel.
3. Errors of law at trial.

The court will address each separately.

There is no question that the court failed to rule on the motion to disqualify before ruling on a motion to dismiss. Pursuant to I.C.R. 25 the court should have ruled on the motion to disqualify first. However, the defendant voluntarily waived his objection to this error prior to his sentencing on April 16, 2007. Even if Herrera had not waived this error it does not appear to be one of the grounds stated for a new trial pursuant to I.C. §19-2406.

The defendant has raised numerous claims of ineffective assistance of counsel as grounds for his Motion for New Trial. Ineffective assistance of counsel is not one of the enumerated grounds for a new trial. *State v. Cantu*, 129 Idaho 673, 931 P.2d 1191 (1997).

The errors of law alleged by Herrera in support of his motion for new trial are as follows:

- a. Failure to instruct the jury on the lesser included offense of battery. This claim has no merit. The verdict form submitted to the jury and the jury instructions allowed the jury to convict for misdemeanor battery.
- b. Prosecutorial Misconduct. Herrera asserts that the state made a comment during closing argument which impermissibly shifted the burden of proof to the defendant. Allegations of prosecutorial misconduct are not grounds for a new trial. *State v. Jones*, 127 Idaho 478, 903 P.2d 67 (1995).
- c. The victim was not a law enforcement officer prior to the battery. This assertion was raised prior to the trial and ruled on by the court. It does not provide grounds for a new trial.

d. The court should have granted the motion to disqualify because of bias or prejudice.

As set forth above, this assertion has no merit. It does not provide grounds for a new trial.

Based upon the foregoing, the defendant's motion for a new trial shall be denied.

b. Motion to Strike or Suppress Psychological Examination and the Addendum to the Presentence Report.

Herrera asserts that the psychological examination should be stricken or suppressed because the psychologist who conducted the examination was "an associate" of the victim and that the Addendum to the Presentence Report should be stricken or suppressed because it was prepared in reliance upon the psychological examination. This motion was voluntarily waived by Herrera at his sentencing on April 16, 2007. However, citing *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1899, 68 L.Ed.2d 359 (1981). Herrera now asserts that he had the right to counsel before submitting to the evaluation. It was Herrera's own counsel who requested the evaluation. The Motion to Strike or Suppress Psychological Evaluation and Addendum to Presentence Report shall be denied.

c. Motion to Strike Persistent Violator Charge.

Herrera was charged with being a persistent violator pursuant to I.C. §19-2514.² Having stipulated to the prior felony convictions he now alleges that two of the prior felony charges should not have been counted because I.C. §18-310 (as it existed at the time of his convictions) would have automatically restored his civil rights. He argues that *Beecham v. U.S.*, 511 U.S. 368, 114 S.Ct. 1669, 128 L.Ed.2d 383 (1994) and *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 103 S.Ct. 986, 74 L.Ed.2d 845 (1983) should be read to require that where a felon's civil rights are restored those convictions should not count as prior convictions under I.C. §19-2514.

² The court has granted Herrera's Motion to Withdraw Guilty Plea on the issue of his prior convictions. Because these same issues are likely to be raised by the defendant when this matter is tried the court has stated its ruling on this question.

The *Beecham* case dealt with convictions for violating a federal law making it a crime for a convicted felon to possess a firearm. Pursuant to 18 U.S.C. §922(g) it was unlawful for a convicted felon to possess a firearm. There was an exception to the statute as follows: "Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had his civil rights restored shall not be considered a conviction..." The Court ruled that the defendants had their civil rights restored in the states where the convictions occurred but their civil rights were not restored as to their prior federal convictions and that the defendants could only take advantage of the exception in the statute if they had their civil rights restored under federal law. The *Dickerson* case dealt with a violation of the federal gun control act making it unlawful for a person who has been convicted of a felony to sell firearms. A corporate officer, director and shareholder of a firearms dealer had been convicted of a felony in state court. The conviction was expunged after he successfully completed probation. The Court ruled that the conviction, despite being expunged under state law, barred the defendant (and the corporation) from being licensed to sell firearms. Neither of these cases stand for the proposition asserted by the defendant nor is the court aware of any provision of Idaho law prohibiting the use of prior convictions for enhancement under I.C. §19-2514 where a defendant's civil rights have been restored.³ The Motion to Strike Persistent Violator charge shall be denied.

d. Motion for Bail Pending Appeal.

Pursuant to I.C.R. 46(b) a defendant may be released on bail or his own recognizance pending appeal. The factors to be considered by the court are the same factors to be considered in determining bail pending sentencing under I.C.R. 46(a) and the court may consider any of those factors. While the court recognizes that the defendant has appeared for court in the past while he was on his own recognizance, that he could be employed in the community, and that he has

³ *State v. Gomez*, 911 F.2d 219 (9th Cir. 1990) cited during argument on the motion only deals with a convicted felon's right to possess a firearm after his civil rights are restored.

family ties in the community, those factors are outweighed by the violent nature of the current charge and the defendant's prior record. The court's primary consideration is, as it was in sentencing the defendant, the protection of society. The Motion for Bail Pending Appeal shall be denied.

c. Motion to Withdraw Guilty Plea.

The defendant has been sentenced in this case but this court has ordered that he be resentenced because the court should have imposed one sentence which included the persistent violator enhancement rather than two separate sentences for the crime and the enhancement. The defendant asserts that the court should apply the "just reason" standard which is appropriate where a defendant moves to withdraw his guilty plea before sentencing rather than the "manifest injustice" standard applied after sentencing. Herrera asserts that he should be allowed to withdraw his guilty plea (actually his admission of the prior felony convictions under I.C. §19-2514) because he did not voluntarily waive his right to have a jury trial on that issue. The court has examined the transcript of the trial dealing with Herrera's admission of the prior felony convictions. After the jury returned a verdict on the underlying charge, Herrera's counsel stated that Herrera would stipulate to the prior felony convictions (Trial Exhibits 4, 5 and 6). The court accepted that stipulation without inquiring of Herrera. Then, after the jury was dismissed by the court, the prosecutor requested that the court make a more complete record of the admission. The court then (in what the court thought, at the time, was a excess of caution) inquired of Herrera as to whether he knew that by admitting the prior convictions he would be giving up the right to have the jury make that determination and whether any threats or promises had been made to him regarding the admission. The court was satisfied that Herrera knowingly and voluntarily made the admissions and accepted the admissions. It appears that the court should have gone one step

MEMORANDUM

further and inquired whether Herrera knew that by admitting the prior convictions he would be subject to an additional penalty under I.C. §19-2514. In *State v. Cheatham*, 139 Idaho 413, 80 P.3d 349 (Ct.App.2003) our Court of Appeals held:

We are persuaded that due process principles preclude the acceptance of a stipulation to the truth of persistent violator allegations without judicial inquiry to determine that the defendant makes the admission voluntarily and with an understanding of the consequences. Under Idaho law, the detriment from being a persistent violator is dramatic. Idaho Code §19-2514 mandates that a persistent violator be sentenced to not less than five years' imprisonment and authorizes up to life imprisonment, regardless of the maximum sentence otherwise fixed by statute for the offense. The defendant may be subject to a sentence "many times as great as that prescribed by statute for the offense." (Citation omitted). A waiver of the right to trial on a recidivist charge therefore ought not to be treated lightly. Although we do not deem a full Boykin litany to be necessary, we hold that a stipulation to the truth of a persistent violator allegation will be valid only if the record shows that the defendant entered into the stipulation voluntarily in the sense that the defendant was not coerced, and knowingly in the sense that the defendant understands the potential sentencing consequences.

Cheatham, 139 Idaho 413, 418, 80 P.3d 354. Here, while the court did inquire as to whether Herrera knew he was giving up his right to a jury trial on the issue of prior convictions and whether he was acting under duress, the court did not inquire regarding Herrera's knowledge of the consequences of his admission. Therefore, the court is constrained to grant the defendant's Motion to Withdraw Guilty Plea whether the "just reason" or the "manifest injustice" standard is applied.

f. Other *pro se* Motions.

The defendant has sent numerous hand-written documents to the court. The court believes that this *Memorandum Decision* deals with all of the defendant's motions. If there are other outstanding motions not specifically addressed in this *Memorandum Decision* the court will deny such motions so the record may be complete.

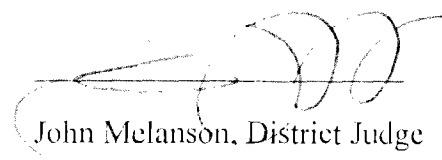
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ORDER

Based upon the foregoing, it is hereby **ORDERED** as follows:

1. The Motion for New Trial is **DENIED**.
2. The Motion to Strike or Suppress Psychological Examination and the Addendum to the Presentence Report is **DENIED**.
3. The Motion to Strike Persistent Violator Charge is **DENIED**.
4. The Motion for Bail Pending Appeal is **DENIED**.
5. The Motion to Withdraw Guilty Plea is **GRANTED**. The defendant is entitled to have a jury trial on the issue of whether he has two or more prior felony convictions.
6. Other *pro se* motions, if any, to the extent not disposed of by this decision are **DENIED**.
7. This case shall be set for a status and scheduling conference on the next available date.

Dated July 28, 2008



John Melanson, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of July, 2008, I served a true and correct copy of the foregoing document, MEMORANDUM DECISION AND ORDER ON DEFENDANT'S POST TRIAL MOTIONS, upon the following

Mr. Michael P. Tribe
Robinson & Associates
P.O. Box 396
Rupert, Idaho 83350-0396

☒ U.S. Mail, postage prepaid
☐ Telecopy
☐ Delivery to mail file or basket

Mr. Blaine P. Cannon
Deputy Prosecuting Attorney
P.O. Box 7
Burley, Idaho 83318

☐ U.S. Mail, postage prepaid
☐ Telecopy
☒ Delivery to mail file or basket

Clerk of the District Court

By:

[Signature]
Deputy Clerk

2008 JUL 28 PM 4:32

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

)
)
) Case No: CR-2006-0003507 D
)
)
)

) **NOTICE OF HEARING**
) **Status Conference /**
) **Pretrial Conference**
)
)
)
)

NOTICE IS HEREBY GIVEN that the above-entitled matter is set for
hearing on **Friday, September 05, 2008** at **01:00 PM** in the District Courtroom of the
above-entitled court.

DATED: 7/28/2008.


TARA GUNDERSON
Deputy Clerk

pc: County Prosecutor
Michael P Tribe

000222

2008 JUL 28 PM 4:00

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR
CASSIA COUNTY

STATE OF IDAHO,

Plaintiff,

Vs.

VALENTINO ALEX HERRERA,
Idaho Maximum Security Institution -
P.O. Box 51
Boise, ID 83707

DOB: [REDACTED]

Defendant.

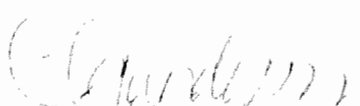
Case No. CR-2006-0003507 D

NOTICE OF TRIAL SETTING

Notice is given that the above-entitled case is hereby set for trial on
Tuesday, September 23, 2008, at 09:00 AM, before a jury.

**TRIAL LOCATION: CASSIA COUNTY DISTRICT COURT.
DAYS RESERVED: 2 DAYS
SETTING: FIRST PLACE**

DATED this 28th day of July, 2008.



Tara Gunderson
Deputy Clerk

Alternate Judges: Notice is hereby given that the presiding Judge listed above intends to utilize the provisions of I.R.C.P. 40(d)(1)(G). Notice is also given that if there are multiple parties, any disqualification pursuant to said rule is subject to a prior determination under I.R.C.P. 40(d)(1)(C). The panel lists consists of all current District Judges of the Fifth Judicial District (I.C. 1-806), State of Idaho who have otherwise not been disqualified. Judges Bevan, Butler, Stoker, Elgee, Higer, Crabtree, Hurlbutt, Meehl, Melanson, and Wood.

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of July, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Blaine Cannon X Courthouse Box
Deputy Prosecuting Attorney
1918 Overland Avenue
P.O. Box 7
Burley, ID 83318
2. Michael P Tribe X U.S. Mail
Attorney at Law
P.O. Box 396
Rupert, ID 83350



Tara Gurderson
Deputy Clerk

148 - 15 District

148 Aug 20 2002

Burley 9A. 83318

Pro Se

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IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR BLISS COUNTY

State of Idaho,

Plaintiff

v.

Valentino Herrera,

Defendant

CASE NO CR-DIG 3507 PD

Motion for:

Automatic Disqualification of
District Judge IN Pending
Jury Trial etc. etc.

Comes Now the Defendant in the above entitled
matter, and moves this Honorable Court pursuant to
I.C.R. 25(a) and ask that the presiding Judge
be automatically disqualified from the above entitled
action and says further subsequent Verdict etc.,
to the above entitled case, that if the Court is so
inclined to so order the same.

Subscribed and sworn to before me this

_____ day of _____, 2002.

000214

Order of the Court

It is the order of the Court that the Clerk of the Court be and he is hereby directed to cause to be filed in the Court on the 12th day of August, 2008, the following: the Court's order of the Court Mail System to be delivered the County Clerk's Office to be filed in the Court with the Clerk of the Court and the Proceedings to be filed in the Court and to be filed in the Court as follows:

Vice. John H. Williams
Sergeant, 2nd District
Robert Id. 83350

Clerk of the District Court
Cassia County Court House
1459 Oxford Avenue
Burien, Idaho 83413

Clerk of the District Court
Cassia County Court House
Robert Id. 83350

Cassia County Prison House
PO Box 7
Burien Idaho 83413

Case: C 8/1/08

By: John H. Williams

Sergeant, 2nd District

CC: John H. Williams

1459 Oxford Avenue

Burien, Idaho 83413

Robert Id. 83350

Page 2

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[Faint, mostly illegible text spanning the main body of the page, possibly containing a list or report.]

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2008 AUG 27 AM 10:37

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant

Case No.: CR-2006-3507

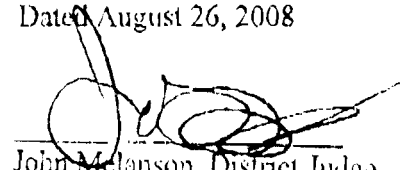
ORDER DENYING MOTION TO
DISQUALIFY JUDGE WITHOUT CAUSE,
RULE 25, I.C.R.

The defendant, who is represented by counsel, has filed a pro se *Motion for Automatic Disqualification of District Judge in Pending Jury Trial*. The motion is brought pursuant to Rule 25(a), I.C.R. which permits a defendant to disqualify one judge without stating any grounds therefore. Rule 25(a)(2) I.C.R. provides that such motions:

[M]ust be filed within seven (7) days after service of a written notice setting the action for status conference, pre-trial conference, trial, or for the hearing on the first contested motion, or not later than fourteen (14) days after the service of a written notice specifying who the presiding judge or magistrate in the action will be, whichever occurs first; and such motion must be filed before the commencement of a status conference, a pre-trial conference, a contested proceeding or a trial in the action.

The undersigned judge was assigned to this case in late 2006. The court has heard and decided numerous contested matters. The motion is not timely and it is, therefore, DENIED.

Dated August 26, 2008


John McLanson, District Judge

ORDER DENYING MOTION TO DISQUALIFY JUDGE WITHOUT CAUSE

000223

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 11/15/2007, 2007, I served the foregoing document, ORDER DENYING MOTION TO DISQUALIFY JUDGE WITHOUT CAUSE, RULE 25(a) I.C.R., upon the following in the manner indicated:

Mr. Michael p. Tribe
Robinson & Associates
P.O. Box 396
Rupert, Idaho 83350

☐ U.S. Mail, Postage Paid
☐ Hand Delivered

Mr. Blaine P. Cannon
Deputy Cassia County Prosecuting Attorney
P.O. Box 7
Burley, Idaho 83318

☐ U.S. Mail, Postage Paid
☒ Hand Delivered

Clerk of the District Court

[Signature], Deputy

1 ALFRED E. BARRUS (ISB #1704)
Prosecuting Attorney
2 BLAINE P. CANNON (ISB #5575)
Deputy Prosecuting Attorney
3 DOUGLAS G. ABENROTH (ISB #7181)
Deputy Prosecuting Attorney
Cassia County, Idaho
1918 Overland Avenue
4 Post Office Box 7
Burley, Idaho 83318
Telephone: 208-878-0419
5 Facsimile: 208-878-2924

2008 AUG 28 PM 1:26

CG

6 Attorneys for State of Idaho

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2006-03507 D

11 Plaintiff,

12 vs.

**OBJECTION TO DEFENDANT'S
MOTION TO DISMISS**

13 VALENTINO HERRERA,

14 Defendant.
15 _____

16 COMES NOW Blaine P. Cannon, Deputy Prosecuting Attorney for Cassia County,
17 Idaho, and objects to the Defendant's Motion to Dismiss Part II-Persistent Violator. The
18 Defendant's Motion is not supported by case law or statutory authority.

19
20
21 DATED this 28 day of August, 2008.

22 BLAINE P. CANNON
23 Deputy Prosecuting Attorney

24 *Blaine Cannon*
25 _____
26
27
28

OBJECTION TO DEFENDANT'S MOTION TO DISMISS - 1

11 Shantel County Criminal Mo. Orders, Objections, Stip Objections/ Defendants Object Mo to Dismiss - Herrera.wpd

000225

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3 **CERTIFICATE OF MAILING**

4 I hereby certify that on the 28 day of August, 2008, I caused a true and
5 correct copy of the foregoing Objection to Defendant's Motion To Dismiss to be served upon the
6 attorney named below in the manner noted:

7 Michael Tribe
8 Attorney at Law
9 P.O. Box 396
10 Rupert, Idaho 83350

11 Valentino Herrera
12 Mini-Cassia Criminal Justice Center
13 1415 Albion Avenue
14 Burley, Idaho 83318

15 X by depositing a copy thereof in the United State's mail, postage prepaid, in an
16 envelope addressed to said attorney at the foregoing address.

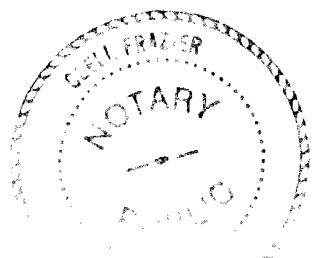
17 _____ by hand delivering copies of the same to the office of the attorney at the address above
18 indicated.

19 _____ by telecopying copies of the same to said attorney at his/her telecopy number of
20 _____, and then by mailing copies of the same in the United States Mail,
21 postage prepaid, at the Burley Post Office in Burley, Idaho.

22 _____ by delivering a copy thereof to said attorney's mail file or basket at the Cassia County
23 Courthouse in Burley, Idaho.

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BLAINE P. CANNON
Deputy Prosecuting Attorney





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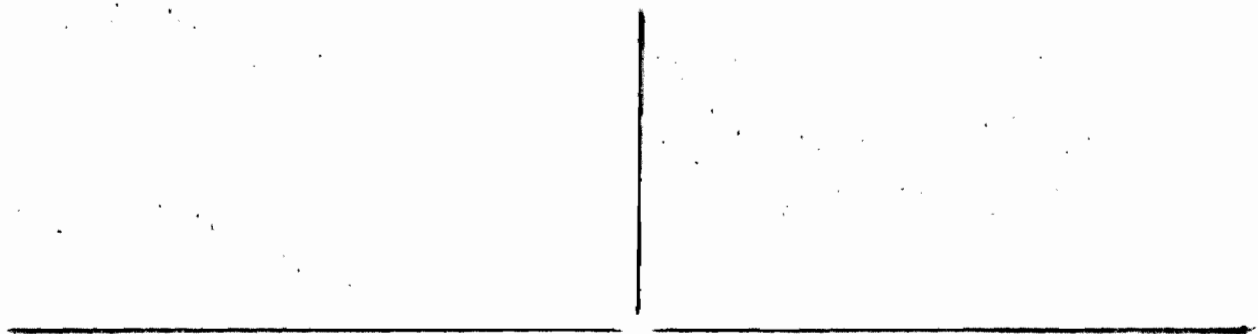
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1 **ALFRED E. BARRUS** (ISB #1704)
2 *Prosecuting Attorney*
3 **BLAINE P. CANNON** (ISB #5575)
4 *Deputy Prosecuting Attorney*
5 **DOUGLAS G. ABENROTH** (ISB #7181)
6 *Deputy Prosecuting Attorney*
7 **Cassia County, Idaho**
8 1918 Overland Avenue
9 Post Office Box 7
10 Burley, Idaho 83318
11 Telephone: 208-878-0419
12 Facsimile: 208-878-2924

13 Attorneys for State of Idaho

14
15
16 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
17 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

18 **STATE OF IDAHO,**

Case No. CR-2006-03507 D

19 Plaintiff,

20 vs.

REQUEST FOR HEARING

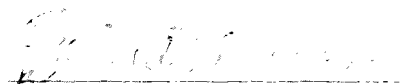
21 **VALENTINO HERRERA,**

22 Defendant.

23
24 The State hereby requests that the Court schedule a hearing regarding the
25 Defendant's Motion for Appointment of New Counsel dated August 28, 2008, so that inquiry of the
26 Defendant and his counsel can be made.

27
28 **DATED** this 4 day of September, 2008.

BLAINE P. CANNON
Deputy Prosecuting Attorney



REQUEST FOR HEARING - 1

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CERTIFICATE OF MAILING

I hereby certify that on the 4 day of September, 2008, I caused a true and correct copy of the foregoing REQUEST FOR HEARING, to be mailed to:

Valentino Herrera
Mini-Cassia Criminal Justice Center
1415 Albion Avenue
Burley, Idaho 83318

Michael Tribe
Attorney at Law
P.O. Box 396
Rupert, Idaho 83350



BLAINE P. CANNON
Deputy Prosecuting Attorney

20070905 1:12

Date: 9/5/2008
Time: 01:42 PM
Page 1 of 3

Fifth Judicial District Court - Cassia County

User: TARA

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Status	Minutes date:	09/05/2008
Assigned judge:	John Melanson	Start time:	01:00 PM
Court reporter:	Maureen Newton	End time:	01:00 PM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	Blaine Cannon		
Defense attorney:	Michael P Tribe		

Tape Counter: 112 The defendant is present and is in custody.
Michael Tribe is present on behalf of the defendant.
Blaine Cannon is present on behalf of the State of Idaho.
The Court reviews the motions filed by the defendant pro se.
The Court has received and reviewed the defendant's motion and affidavit re: Motion for New Counsel.

Tape Counter: 114 Michael Tribe has nothing to add to the motions and/or affidavit.
Blaine Cannon addresses the Court.

Tape Counter: 115 Valentino Herrera addresses the Court; argues his motion for new counsel; cites considerations.

Tape Counter: 120 Michael Tribe addresses the Court.

Tape Counter: 121 Blaine Cannon addresses the Court; objects to the Defendant's Motion for New Counsel; cites considerations.

Tape Counter: 124 Valentino Herrera addresses the Court.

Tape Counter: 127 The Court DENIES the defendant's Motion for New Counsel; cites considerations; the Court will submit a written order.

Tape Counter: 128 The Court Orders the defendant to no longer file pro se motions with the Court; cites considerations; the Court will submit a written order.

000255

Date: 9/5/2008
Time: 01:42 PM
Page 2 of 3

Fifth Judicial District Court - Cassia County

User: TARA

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 129	The defendant addresses the Court; objects to the Court's ruling re: filing pro se motions, cites he would like to proceed pro se; cites considerations.
Tape Counter: 132	The Court addresses the defendant; cautions the defendant re: proceeding pro se; reviews the importance of having an attorney.
Tape Counter: 133	The defendant intends to file pro se; cites considerations.
Tape Counter: 134	The defendant sworn by Clerk. The Court examines the defendant re: age, education, etc.
Tape Counter: 136	The Court addresses the defendant.
Tape Counter: 137	The Court continues to examine the defendant. The Court reviews the maximum penalties for this charge - life. The defendant cites he understands the maximum penalties.
Tape Counter: 140	The Court emphasizes the importance of having an attorney. The defendant has received no threats and/or promises.
Tape Counter: 141	The Court addresses Michael Tribe re: standby counsel. Michael Tribe requests clarification. The Court addresses Michael Tribe. Michael Tribe cites he will do what ever the Court asks of him.
Tape Counter: 143	Blaine Cannon addresses the Court; moves the Court for a continuance of trial; cites considerations.
Tape Counter: 145	The defendant cites he does not need any additional time; cites he is ready to proceed to trial; cites considerations.
Tape Counter: 147	The Court sets a pretrial conference in this matter one week prior to trial - Notice will be mailed out. Michael tribe is requested to appear at the next hearing. The Court grants the defendat's motion to proceed pro se.

Date: 9/5/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 01:42 PM

Minutes Report

Page 3 of 3

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 148

Hearing concludes.

000257

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,


Defendant

Case No.: CR-2006-3507

**ORDER DENYING MOTION FOR
APPOINTMENT OF NEW COUNSEL**

The defendant, who is represented by court-appointed counsel, has filed a *pro se* motion, supported by affidavit, for appointment of new counsel. The affidavit, in summary, asserts that defense counsel does not spend sufficient time with the defendant and that defense counsel did not give the defendant an opportunity to read a memorandum of law prior to its submission to the court. The affidavit fails to state sufficient grounds to require the court to appoint another attorney. The motion is hereby DENIED.

Dated September 4, 2008


John Melanson, District Judge

000258

CERTIFICATE OF MAILING

I hereby certify that on this 5th day of September, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Blaine Cannon X Courthouse Box
Deputy Prosecuting Attorney
1918 Overland Avenue
P.O. Box 7
Burley, ID 83318
2. Michael P Tribe X U.S. Mail
Attorney at Law
P.O. Box 396
Rupert, ID 83350
3. Valentino Herrera X U.S. Mail
c/o MCCJC
1415 Albion Avenue
Burley, ID 83318

Tara Gunderson
Deputy Clerk

7/17/08 3:10:13

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

)
)
) Case No: CR-2006-0003507 D
)
)
)

) NOTICE OF HEARING
) PRETRIAL CONFERENCE
)
)
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)

NOTICE IS HEREBY GIVEN that the above-entitled matter is set for
hearing on **Thursday, September 18, 2008** at **09:00 AM** in the District Courtroom of
the above-entitled court.

DATED: 9/5/2008.

TARA GUNDERSON
Deputy Clerk

pc: County Prosecutor
Defendant - Pro se
Michael Tribe

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000261

Journal of Management Studies, 19(1), 67-80.

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Case No: CR-2006-0003507 D

NOTICE OF HEARING
Defendant's Motion to Dismiss Part 2 -
Persistent Violator

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TARA GUNDERSON
Deputy Clerk

pc: County Prosecutor
Defendant - Pro se
Judge Melanson

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant

Case No: CR-2006-3507

**ORDER GRANTING DEFENDANT'S
MOTION TO PROCEED PRO SE AND
APPOINTING STANDBY COUNSEL**

On September 5, 2008, this court denied the defendant's *pro se* Motion for Appointment of New Counsel. The court, acting *sua sponte*, then informed the defendant that, as long as he was represented by counsel, the court would no longer accept the defendant's *pro se* briefs, memoranda, letters and motions (with the exception of motions for appointment of new counsel), but would require future pleadings, motions, etc. to be filed through counsel. The defendant then moved to proceed without counsel. The court, after inquiry as required by *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 525, 45 L.Ed.2d 562 (1975), finds that the defendant knowingly, intelligently and voluntarily waived his right to counsel, and that he has been informed of and understands the risks inherent in his decision. It is, therefore, ORDERED that the motion to proceed *pro se* is GRANTED, provided, however, that the defendant's prior counsel, Mr. Michale P. Tribe, is hereby appointed as standby counsel to assist the defendant if needed with

000266

the scope of his duties defined in this court's *Order Re: Scope of Duties of Standby Counsel*.

Dated September 9, 2008

John Melanson, District Judge

000267

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on _____, 2008, I served the foregoing document, ORDER GRANTING DEFENDANT'S MOTION TO PROCEED PRO SE, upon the following in the manner indicated:

Mr. Blaine P. Cannon
Deputy Cassia County Prosecuting Attorney
P.O. Box 7
Burley, Idaho 83318

☐ U.S. Mail, Postage Paid
☐ Hand Delivered
☐ FAX

Mr. Valentino Herrera
Mini-Cassia Criminal Justice Center
1415 Albion
Burley, Idaho 83318

☐ U.S. mail, Postage Prepaid
☐ Hand Delivered
☐ FAX

Mr. Michael P. Tribe (Standby Counsel)
Robinson & Associates
P.O. Box 396
Rupert, Idaho 83350

☐ U.S. Mail, Postage Paid
☐ Hand Delivered
☐ FAX

Clerk of the District Court

_____, Deputy

006269

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant

Case No: CR-2006-3507

ORDER RE: SCOPE OF DUTIES OF
STANDBY COUNSEL

On September 5, 2008, this court denied the defendant's *pro se* Motion for Appointment of New Counsel. The court, acting *sua sponte*, also informed the defendant that, as long as he was represented by counsel, the court would no longer accept the defendant's *pro se* briefs, memoranda, letters and motions (with the exception of motions for appointment of new counsel), but would require future pleadings, motions, etc. to be filed through counsel. The defendant then moved to proceed without counsel. The court, after inquiry as required by *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 525, 45 L.Ed.2d 562 (1975), and finding that the defendant knowingly, intelligently and voluntarily waived his right to counsel, granted the defendant's motion as a matter of the defendant's constitutional right to represent himself. However, at the defendant's request, in the court's discretion, the court also appointed the defendant's previous counsel as

000269

standby counsel to assist the defendant if needed. Standby counsel has inquired as to the scope of his duties.

The scope of duties of standby counsel will necessarily vary from case to case depending upon the complexity of the case and the abilities of the *pro se* defendant. There will usually be a disparity between the defendant's constitutional right and desire to represent himself and his ability to do so. Plainly, a *pro se* defendant is entitled to retain actual control over the case he chooses to present to the jury and even well-intentioned interference with that right may impermissibly erode it. Our United States Supreme Court has set forth the following two rules applicable to standby counsel while in the presence of the jury:

First, the *pro se* defendant is entitled to preserve actual control over the case he chooses to present to the jury. This is the core of the *Faretta* right. If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak *instead* of the defendant on any matter of importance, the *Faretta* right is eroded.

Second, participation by standby counsel without the defendant's consent should not be allowed to destroy the jury's perception that the defendant is representing himself. The defendant's appearance in the status of one conducting his own defense is important in a criminal trial, since the right to appear *pro se* exists to affirm the accused's individual dignity and autonomy. In related contexts the courts have recognized that a defendant has a right to be present at all important stages of trial, *Snyder v. Massachusetts*, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674 (1934), that he may not normally be forced to appear in court in shackles or prison garb, *Estelle v. Williams*, 425 U.S. 501, 504-505, 96 S.Ct. 1691, 1693, 48 L.Ed.2d 126 (1976), and that he has a right to present testimony in his own behalf, see *Harris v. New York*, 401 U.S. 222, 225, 91 S.Ct. 643, 645, 28 L.Ed.2d 1 (1971); *Brooks v. Tennessee*, 406 U.S. 605, 612, 92 S.Ct. 1891, 1895, 32 L.Ed.2d 358 (1972). Appearing before the jury in the status of one who is defending himself may be equally important to the *pro se* defendant. From the jury's perspective, the message conveyed by the defense may depend as much on the messenger as on the message itself. From the defendant's own point of view, the right to appear *pro se* can lose much of its importance if only the lawyers in the courtroom know that the right is being exercised.

McKaskle v. Wiggins, 465 U.S. 168, 178, 104 S.Ct. 944, 951, 79 L.Ed.2d 122 (1984) (footnotes omitted). Of course, a defendant may always request *more* help than is offered or even abandon

his desire to proceed *pro se* and participation of standby counsel with the defendant's approval does not raise constitutional concerns. As to activities outside the presence of the jury, the Court observed:

Participation by standby counsel outside the presence of the jury engages only the first of these two limitations. A trial judge, who in any event receives a defendant's original *Faretta* request and supervises the protection of the right throughout the trial, must be considered capable of differentiating the claims presented by a *pro se* defendant from those presented by standby counsel. (Cf. *United States v. Martinez*, 597 F.2d 509, 510-511 (CA5), cert. denied, 444 U.S. 979, 100 S.Ct. 479, 62 L.Ed.2d 405 (1979); *United States v. Penick*, 496 F.2d 1105, 1108 (CA7), cert. denied, 419 U.S. 897, 95 S.Ct. 177, 42 L.Ed.2d 141 (1974); *United States v. Reeves*, 348 F.2d 469 (CA2 1965), cert. denied, 383 U.S. 929, 86 S.Ct. 936, 15 L.Ed.2d 848 (1966). Accordingly, the appearance of a *pro se* defendant's self-representation will not be unacceptably undermined by counsel's participation outside the presence of the jury.

Thus, *Faretta* rights are adequately vindicated in proceedings outside the presence of the jury if the *pro se* defendant is allowed to address the court freely on his own behalf and if disagreements between counsel and the *pro se* defendant are resolved in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel.

Id., 465 U.S. 168, 178, 104 S.Ct. 944, 951 (footnotes omitted).

22 C.J.S. Criminal Law, §382 summarizes some of the duties of standby counsel as follows:

[N]otwithstanding an accused's exercise of the right of self representation, the court may appoint standby counsel, even over the accused's objection, to relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the accused in overcoming routine obstacles that stand in the way of achievement of his or her own clearly indicated goals, and to be available to represent the accused in the event that termination of self representation is necessary. . . .

21 Am.Jur.2d Criminal Law §1160 notes that "Standby counsel acts as a safety net to insure the defendant receives a fair trial and to allow the trial to proceed without the undue delays likely to arise when a defendant represents him- or herself."

With the foregoing in mind, the court, in an exercise of discretion, ORDERS as follows:

000271

1. It appears to the court that the defendant in this case has legal theories he wishes to pursue and to that end he has filed his own briefs and memoranda in support of those theories. He has the right to do so and he has shown that he is capable of communicating his legal theories to the court in writing. Standby counsel need not assist the defendant in preparation of briefs and memoranda of law (including post-trial) unless specifically requested to do so by the defendant and then counsel's obligation shall only be to provide advice as to the law and the rules of the court. Whether the defendant decides to take that advice is up to him. Provided, however, that if a memorandum of law has already been prepared by standby counsel prior to the court granting the defendant's motion to proceed *pro se*, that memorandum of law may, with the consent of the defendant, be filed with the court.
2. Standby counsel shall assist the defendant with the jury selection process, explain the struck jury procedures to the defendant, assist the defendant with voir dire, and assist the defendant with exercising challenges for cause and peremptory challenges. If requested by the defendant, standby counsel may assist the defendant in formulating questions for prospective jurors on *voir dire*.
3. During trial, standby counsel may answer the defendant's questions and offer advice to the defendant regarding the law, rules of the court and trial tactics or strategy. Standby counsel may assist the defendant with introduction of exhibits or other evidence, if any.
4. Standby counsel shall, if practicable, remain ready to assume the duties of counsel if the defendant chooses to cease self-representation or if the court determines that the defendant can no longer represent himself.
5. The court does not intend to permit what is known as hybrid representation—that is,

000272

concurrent self-representation and representation by counsel. There is no constitutional right to hybrid representation and no reason to permit it in this case. The defendant is representing himself and standby counsel's role is as stated herein.

Dated September 9, 2008

John Melanson, District Judge

000273

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on _____, 2008, I served the foregoing document, ORDER RE: SCOPE OF DUTIES OF STANDBY COUNSEL, upon the following in the manner indicated:

Mr. Blaine P. Cannon
Deputy Cassia County Prosecuting Attorney
P.O. Box 7
Burley, Idaho 83318

☐ U.S. Mail, Postage Paid
☐ Hand Delivered
☐ FAX

Mr. Valentino Herrera
Mini-Cassia Criminal Justice Center
1415 Albion
Burley, Idaho 83318

☐ U.S. mail, Postage Prepaid
☐ Hand Delivered
☐ FAX

Mr. Michael P. Tribe (Standby Counsel)
Robinson & Associates
P.O. Box 396
Rupert, Idaho 83350

☐ U.S. Mail, Postage Paid
☐ Hand Delivered
☐ FAX

Clerk of the District Court

_____, Deputy

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant

Case No.: CR-2006-3507

PRETRIAL ORDER

The court, in its discretion, having determined that entry of a pretrial order in this case will promote a fair and expeditious trial, it is hereby ORDERED as follows:

1. The jury trial shall commence at 9:00 a.m. on September 23, 2008.
2. Because the sentencing enhancement provided by I.C. §19-2514 permits a sentence of life in prison, each side shall have ten (10) preemptory challenges as required by I.C.R. 24(c).
3. The court shall utilize a struck jury as provided in I.C.R. 24(e) with a panel of 32 jurors. No alternate or additional jurors shall be empanelled.
4. Because the issues of fact to be submitted to the jury in this case are straightforward, *voir dire* shall be limited to 90 minutes for each side.
5. Opening statements shall be limited to 30 minutes for each side.

000275

6. Closing arguments shall be limited to 30 minutes for each side. The state may divide its time so that a portion of its 30 minutes is reserved for rebuttal.
7. The issues to be submitted to the jury for decision shall be issues of fact related to the alleged prior convictions. Thus, the state is required to prove the convictions, as well as establish the identity of the defendant as the person formerly convicted, beyond a reasonable doubt. *State v. Cheatham*, 139 Idaho 413, 426, 80 P.3d 349, 352 (Ct.App.2003); *State v. Martinez*, 102 Idaho 875, 880, 634 P.2d 555, 560 (Ct.App.1982). *State v. Medrain*, 143 Idaho 329, 332, 144 P.3d 34, 37 (Ct.App.2006).
8. Questions of law, such as the legal validity of prior convictions and whether such prior convictions may, as a matter of law, be used by the state as the basis for enhancement under I.C. §19-2514, shall not be submitted or argued to the jury. The court notes that there is no right to collaterally attack the constitutional validity of a prior judgment in these circumstances absent outright denial of counsel in the prior cases. *State v. Weber*, 140 Idaho 89, 90 P.3d 314 (2004); *State v. Warren*, 135 Idaho 836, 25 P.3d 859 (Ct.App.2001).

Dated September 8, 2008

John Melanson, District Judge

000276

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on _____, 2008, I served the foregoing document, PRETRIAL ORDER, upon the following in the manner indicated:

Mr. Blaine P. Cannon
Deputy Cassia County Prosecuting Attorney
P.O. Box 7
Burley, Idaho 83318

☐ U.S. Mail, Postage Paid
☒ Hand Delivered
☐ FAX

Mr. Valentino Herrera
Mini-Cassia Criminal Justice Center
1415 Albion
Burley, Idaho 83318

☐ U.S. mail, Postage Prepaid
☐ Hand Delivered
☐ FAX

Mr. Michael P. Tribe (Standby Counsel)
Robinson & Associates
P.O. Box 396
Rupert, Idaho 83350

☐ U.S. Mail, Postage Paid
☐ Hand Delivered
☐ FAX

Clerk of the District Court

_____, Deputy

1 ALFRED E. BARRUS (ISB #1704)
2 *Deputy Prosecuting Attorney*
3 BLAINE P. CANNON (ISB #5575)
4 *Deputy Prosecuting Attorney*
5 DOUGLAS G. ABENROTH (ISB #7181)
6 *Deputy Prosecuting Attorney*
7 Cassia County, Idaho
8 1918 Overland Avenue
9 Post Office Box 7
10 Burley, Idaho 83318
11 Telephone 208-878-0419
12 Facsimile 208-878-2924

13 Attorneys for State of Idaho
14 06-134

15
16 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
17 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

18 STATE OF IDAHO,

Case No. CR-2006-03507*D

19 Plaintiff,

20 vs.

Fourth
STATE'S SUPPLEMENTAL
DISCOVERY RESPONSE

21 VALENTINO HERRERA,

22 Defendant.

23
24 COMES NOW Blaine P. Cannon, Cassia County Deputy Prosecutor, and
25 supplements the State's Discovery Response as follows:

26 1. Documents: Enclosed please find the following documents which might be
27 offered as exhibits at trial:

28 (a) MCCJC Booking Report

2. Tangible Objects: The State may use any of the following objects as exhibits at
the trial and arrangements can be made with my office to inspect these objects:

(a) Court File 1761-1-82

(b) Court file 1995-1430

(c) Transcript of Trial

3. Witnesses: The State may call the following persons as witnesses at trial. To
prevent the unnecessary disclosure of personal identifying information, we are not providing you

STATE'S SUPPLEMENTAL DISCOVERY RESPONSE - 1

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THE UNIVERSITY OF CHICAGO

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1. The first part of the document is a list of names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are given in full. The list is headed by the name of the committee, and the names of the members are listed in two columns. The addresses are listed in three columns. The list is followed by a table of the names and addresses of the members of the committee.

2. The second part of the document is a list of the names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are given in full. The list is headed by the name of the committee, and the names of the members are listed in two columns. The addresses are listed in three columns. The list is followed by a table of the names and addresses of the members of the committee.

3. The third part of the document is a list of the names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are given in full. The list is headed by the name of the committee, and the names of the members are listed in two columns. The addresses are listed in three columns. The list is followed by a table of the names and addresses of the members of the committee.

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

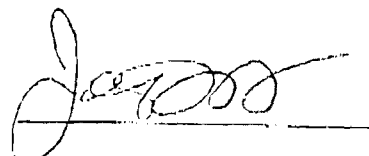
Defendant

Case No.: CR-2006-3507

ORDER DENYING MOTION TO DISMISS
PART II OF THE INFORMATION

A hearing on the defendant's Motion to Dismiss Part II of the Information was held in open court on September 18, 2008. The state was represented by Mr. Alfred Barrus, Cassia County Prosecuting Attorney. The defendant appeared *pro se*. Mr. Michael tribe was present as stand-by counsel. The court heard argument on the motion and considered the defendant's memorandum. The court has determined that the procedural defects asserted by the defendant, if they occurred at all, have been remedied by the court's decision granting the defendant's motion to withdraw his guilty plea or admission as to the prior felony convictions. The defendant is entitled to have a jury trial on the question of whether he is a persistent violator pursuant to I.C. §19-2514. Therefore, the motion to dismiss is hereby DENIED.

Dated September 18, 2008


John Melanson, District Judge

000306

ORDER DENYING MOTION TO DISMISS PART II OF THE INFORMATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 9-19-08, 2008, I served the foregoing document, ORDER DENYING MOTION TO DISMISS PART II OF THE INFORMATION, upon the following in the manner indicated:

Mr. Alfred Barrus
Deputy Cassia County Prosecuting Attorney
P.O. Box 7
Burley, Idaho 83318

☐ U.S. Mail, Postage Paid
☐ Hand Delivered
☒ FAX - 878-2924

Mr. Valentino Herrera
Mini-Cassia Criminal Justice Center
1415 Albion
Burley, Idaho 83318

☐ U.S. mail, Postage Prepaid
☐ Hand Delivered
☒ FAX - 878-1100

Mr. Michael P. Tribe (Standby Counsel)
Robinson & Associates
P.O. Box 396
Rupert, Idaho 83350

☐ U.S. Mail, Postage Paid
☐ Hand Delivered
☒ FAX 436-6804

Clerk of the District Court

[Signature], Deputy

000310

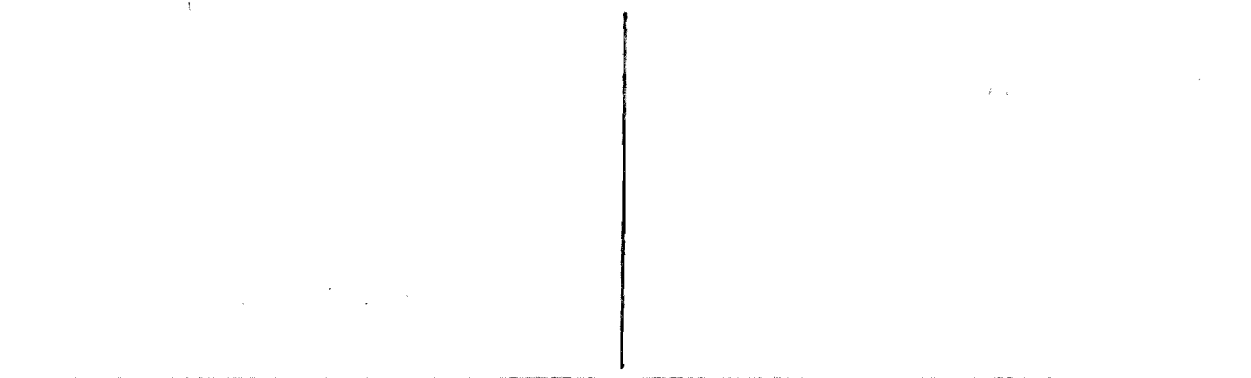
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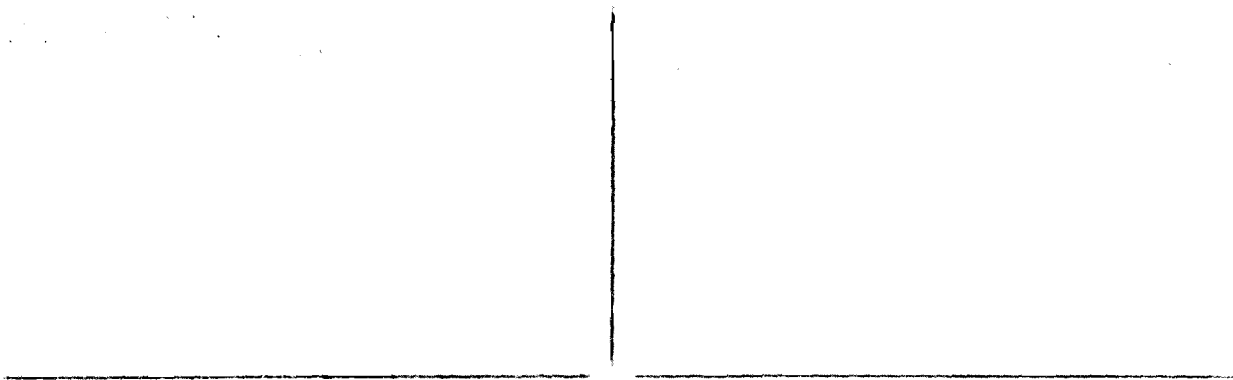
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2008 SEP 22 10:25

Clg.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

)
)
) Case No: CR-2006-0003507 D
)
)
)

) NOTICE OF HEARING
) PENDING MOTIONS
)
)
)
)
)

NOTICE IS HEREBY GIVEN that the above-entitled matter is set for
hearing on Tuesday, September 23, 2008 at 08:30 AM in the District Courtroom of the
above-entitled court.

DATED: 9/22/2008.

Tara Gunderson

TARA GUNDERSON
Deputy Clerk

pc: Judge Melanson - Fax
County Prosecutor - Fax
Defendant - Fax
Michael Tribe - Fax

000322

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

STATE OF IDAHO,

Plaintiff,

Vs.

VALENTINO HERRERA,

Defendant.

CASE NO. CR 06-3507 D

PLAINTIFF'S TRIAL EXHIBIT LIST

Trial Dates: September 23, 2008

ADMITTED

x

SHOWN

NO.	Description of Item	9/23/08				
1	1761-1-82 State of Idaho v. Valentino Herrera (1st Degree Burglary) - Judgment of Conviction	X				
2	Cassia County Case 1761-1-82 State of Idaho v. Valentino Herrera (1st Degree Burglary) - Bench Warrant	X				
3	Twin Falls County Case 6756 State of Idaho v. Herrera (Aggravated DUI) - Judgment of Conviction and Order of Commitment	X				
4	Twin Falls County Case 6756 State of Idaho v. Herrera (Aggravated DUI) - Criminal Complaint	X				
5	Cassia County Case 95-1430 State of Idaho v. Valentino Herrera (Battery on an Officer) - Certified copy of the Judgment of Conviction and Order of Commitment	X				
6	Trial Transcript pages 148, 149 & 164	X				
7	Arrest and Property Record of Valentino Herrera - Return from 120 Day Rider	X				
8	MCCJC Booking Sheet printed 10/13/95	X				
9	Inmate picture of Valentino Herrera	X				
10	Transcript on Appeal for Trial dated January 3 & 4 2007	X				

000324

2008 SEP 23 PM 4:07

Date: 9/23/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 04:02 PM

Minutes Report

Page 1 of 11

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Jury Trial	Minutes date:	09/23/2008
Assigned judge:	John Melanson	Start time:	08:36 AM
Court reporter:	Maureen Newton	End time:	08:36 AM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	Alfred E Barrus		
Defense attorney:	Michael P Tribe		

Tape Counter: 958 The defendant is present with Counsel - Michael Tribe.

Alfred Barrus is present on behalf of the State of Idaho.

Counsel are ready to proceed.

The Court notes roll call of jurors have been taken.

The Court excuses juror # 174 - Sara Bronson; 3 224 - Rolin Barnes Davids and # 200 James Cooper.

No objection by Counsel.

Tape Counter: 1000 The Court addresses the prospective jurors.

The Court introduces Court Staff and the duties of the Court Staff.

Tape Counter: 1003 The Court introduces the parties present.

Tape Counter: 1003 The Court reviews the charge of the defendant.

Tape Counter: 1004 The Court reviews the duties of the jurors.

Tape Counter: 1005 The jurors are instructed not to discuss this case among themselves or with anyone else.

Court explains Voir Dire selection process and the alternative juror; Court explains preemptory challenge.

Tape Counter: 1007 Prospective Jurors sworn in by Clerk.

Tape Counter: 1008 Voir Dire of jurors by Court.

Tape Counter: 1011 Juror # 11 - Rod Patterson- excused for cause.

No objection by Counsel.

000325

Date: 9/23/2008

Time: 04:02 PM

Page 2 of 11

Fifth Judicial District Court - Cassia County

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

User: TARA

Tape Counter: 1024

Counsel approach the bench.

Tape Counter: 1029

Michael Tribe moves to dismiss juror # 73 William Hepworth - for cause.

No objection by the State.

The Court excused juror # 73 - William Hepworth.

Tape Counter: 1030

The Court addresses the jurors re: fair and impartial trial.

Tape Counter: 1032

The Court continues voir dire.

Juror # 1 - Paul Christianson excused for cause.

No objection by Counsel.

Juror # 44 - R.C. Stone excused for cause.

No objection by Counsel.

Michael Tribe moves to excuse Juror 3 45 - Janet Mangum for cause.

No objection by Counsel.

Juror # 45 - Janet Mangum excused for cause.

Michael Tribe moves to excuse juror # 56 - Warren Larsen for cause.

No objection.

Juror # 56 - Warren Larsen excused for cause.

Michael Tribe moves to excuse juror # 71 - Kelby Johnson for cause.

No objection.

Juror # 71 - Kelby Johnson excused for cause.

Tape Counter: 1042

Michael Tribe moves to excuse juror # 26 - Denise Olson for cause.

No objection.

Juror # 26 - Denise Olson excused for cause.

000326

Date: 9/23/2008

Time: 04:02 PM

Page 3 of 11

Fifth Judicial District Court - Cassia County

User: TARA

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 1043

Alfred Barrus moves to dismiss juror # 18 & 53 for cause.

No objection by Counsel.

The Court excuses juror # 18 - Ean Pigford and Juror # 53 - James Lockett for cause.

Tape Counter: 1045

Michael Tribie moves to excuse juror # 16 - Carl McClafin for cause.

No objection.

Juror # 16 - Carl McClafin excused for cause.

Tape Counter: 1050

Juror # 21 - Michael Brown excused for cause.

Alfred Barrus moves to excuse juror # 43 Ronnie orban for cause.

No objection.

Juror # 43 excused for cause.

Michael Tribe moves to excuse Juror # 63 for cause.

No objection

Juror # 63 - Darrell Free excused for cause.

Juror # 66 - Judy Wickel excused for cause.

Juror # 65 - Tearle Mai excused for cause.

Juror # 79 - Robert Critchfield excused for cause.

Juror # 80 - Karlee Ramsey excused for cause.

Tape Counter: 1056

Court in recess.

Court admonishes the jurors not to discuss this case during break.

Tape Counter: 1111

Court resumes

The Court correct the record. Juror 3 73 is on vacation and it was actually juror # 75 - Archie youngs was the juror excused for cause.

000327

Date: 9/23/2008

Time: 04:02 PM

Page 4 of 11

Fifth Judicial District Court - Cassia County

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

User: TARA

Tape Counter: 1112

Alfred Barrus passes the jury panel for cause.

Tape Counter: 1112

Voir dire of jurors by Michael Tribe.

Tape Counter: 1116

The Court addresses counsel re: juror # 38 & 39; cites they were in the wrong seat before.

Tape Counter: 1117

Voir dire of jurors continue.

Tape Counter: 1119

Michael Tribe passes the panel for cause.

Tape Counter: 1120

Peremptory challenge.

Tape Counter: 1128

The Court reviews the peremptory challenge.

The Court thanks the jurors for thier service and participation.

The Court excuses the jurors not selected to serve on this trial.

Tape Counter: 1129

Final jury panel:
3 - Graydon jensen
4 - Roboert Parke
7 - Joseph Molina
8- Courtney Woodworth
10 - Aria Claesemann
13 - Anthony Wheeler
23 - Jennifer McAfee
24 - Terence Smith
25 - Ronald Sorenson
27 - Jaime Rebollozo
31 - Heather Woodland
33- Christine Spelius

Tape Counter: 1134

Counsel stipulate to the jury panel.

Tape Counter: 1135

Juror sworn by Clerk.

The Court addresses the selected jury panel.

The Court reminds the juror to not discuss this case among themselves or with anyone else.

Tape Counter: 1136

The Court thanks the remaining jurors and excuses them.

Date: 9/23/2008

Time: 04:02 PM

Page 5 of 11

Fifth Judicial District Court - Cassia County

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

User: TARA

Tape Counter: 1136

Court in recess.

Tape Counter: 1145

Court resumes.

The Court reviews the proposed jury instructions; reviews preproof instructions 1 thru 8.

The State has no objection to preproof instructions 1 thru 8 and has no additional preproof instructions.

Michael Tribe has no objection to preproof instructions 1 thru 8 and has no additional preproof instructions.

The Court reads out loud jury instruction # 2.

Tape Counter: 1148

Counsel stipulate jurors are present and in their proper seats.

Tape Counter: 1150

The Court reads jury instructions 1 thru 8.

Tape Counter: 1155

The Clerk read the highlighted portions of the Amended Information filed September 29, 2006.

Tape Counter: 1155

The Court continues reading the jury instructions.

Tape Counter: 1204

Opening Statement by Alfred Barrus on behalf of the State of Idaho.

Tape Counter: 1209

Michael Tribe reserves the opening statement.

Tape Counter: 1210

Court instructs jurors not to discuss this case during the break. The Jurors are to return by 1:30 p.m.

Tape Counter: 1210

Jurors in recess.

Date: 9/23/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time 04 02 PM

Minutes Report

Page 6 of 11

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 1211

The Court addresses counsel re: jury instruction re: judicial notice.

The Court inquires of the State re: what it is the State wants the Court to take judicial notice of.

Alfred Barrus asks the

Judgment of Conviction and the Bench Warrant in CR 1761-1-82.

Judgment of Conviction dated November 21, 1996 in CR 1995-1430.

Criminal Complaint; Judgment of Conviction and Order of Commitment in CR 6757.

Michael Tribe does not object to the Court taking judicial notice of the document; does request more foundations and reviews continuing objection re: foundation issue.

Tape Counter: 1215

Alfred Barrus moves the Court to take judicial notice of the transcript; cites considerations.

Tape Counter: 1217

Michael Tribe addresses the Court.

Discussion between Court and Counsel re: transcript.

The Court will take judicial notice of the fact that there is a transcript to be read; cites considerations.

Tape Counter: 1220

Michael Tribe continues his objection to the bench warrant coming in; cites considerations.

The Court will allow the bench warrant in; cites considerations.

Tape Counter: 1221

Alfred Barrus addresses the Court re: copies of judgment(s) and transcripts.

Tape Counter: 1222

Court in recess.

Tape Counter: 140

Court resumes.

Tape Counter: 141

The Court reviews the Jury Instruction re: judicial notice.

Michael Tribe renews the defendant's objection re: judicial notice of the bench warrant and the order of Commitment in CR 1995-1430 and authentication; cites considerations.

The Court notes the objection.

Tape Counter: 143

Counsel stipulate the jurors are present and in the proper seats.

Date: 9/23/2008

Time: 04:02 PM

Page 7 of 11

Fifth Judicial District Court - Cassia County

User: TARA

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 144

Alfred Barrus requests the Court take judicial notice of the followings cases:
State's Exhibit # 1 - 1761-1-82 State of Idaho v. Valentino Herrera
(1st Degree Burglary) - Judgment of Conviction

State's Exhibit # 2 - Cassia County Case 1761-1-82 State of Idaho v. Valentino Herrera
(1st Degree Burglary) - Bench Warrant

State's Exhibit # 3 - Twin Falls County Case 6756 State of Idaho v. Herrera (Aggravated
DUI) - Judgment of Conviction and Order of Commitment

State's Exhibit # 4 - Twin Falls County Case 6756 State of Idaho v. Herrera (Aggravated
DUI) - Criminal Complaint

State's Exhibit # 5 - Cassia County Case 95-1430 State of Idaho v. Valentino Herrera
(Battery on an Office) - Certified copy of the Judgment of Conviction and Order of
Commitment

Tape Counter: 149

Alfred Barrus moves the Court for admission of State's exhibits 1 thru 5 and for the Court
to take judicial notice of those exhibits

Michael Tribe continues his objection; cites considerations.

Tape Counter: 151

The Court OVERRULES the defendant's objections.

The Court takes judicial notice of State's exhibits 1 thru 5; cites considerations.

The Court ADMITS State's exhibits 1 thru 5.

The Court addresses the jurors re: jury instruction # 9.

Copies of the State's Exhibits are published to the jurors.

The Clerk marks the State's Exhibits 1 thru 5 as "ADMITTED".

Tape Counter: 154

Alfred Barrus requests that portions of the trial transcript pages 148, 149 & 164 be
marked as State's Exhibit # 6; requests the Court take judicial notice of State's Exhibit # 6.

Michael Tribe addresses the Court - no objection for limited purpose; cites considerations

The Court admits State's Exhibit # 6 - Trial Transcript pages 148, 149 & 164

State's Exhibit # 6 marked "ADMITTED" by the Clerk.

State's Exhibit #1 thru 6 are published to the jurors.

Date: 9/23/2008

Time: 04:02 PM

Page 8 of 11

Fifth Judicial District Court - Cassia County

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

User: TARA

Tape Counter: 157	Alfred Barrus calls State's # 1 witness - Dennis Dexter. Witness sworn by Clerk.
Tape Counter: 158	Direct examination of witness by Alfred Barrus.
Tape Counter: 201	The witness identifies the defendant.
Tape Counter: 209	Alfred Barrus moves for the admission of : State's Exhibit # 7 - Arrest and Property Record of Valentino Herrera - Return from 120 Day Rider State's Exhibit # 8 - MCCJC Booking Sheet printed 10/13/95 State's Exhibit # 9 - Inmate picture of Valentino Herrera.
Tape Counter: 210	Objection by Michael Tribe; lack of foundation; cites considerations.
Tape Counter: 211	Follow up question by Alfred Barrus; to lay more foundation.
Tape Counter: 212	Michael Tribe maintains objection; cites considerations. The Court OVERRULES objection; admits State's exhibits 7, 8 & 9. The Clerk marks the State's Exhibits 7, 8 & 9 as "ADMITTED".
Tape Counter: 213	Alfred Barrus moves for the admission of State's Exhibit # 10 - Transcript on Appeal for Trial dated January 3 & 4 2007 in CR 2006-3507. The witness reviews State's Exhibit # 10.
Tape Counter: 217	Cross Examination of witness by Michael Tribe.
Tape Counter: 221	Re-direct examination of witness by Alfred Barrus.
Tape Counter: 222	Follow up by Michael Tribe. Nothing further of the witness. The witness steps down.

Date 9/23/2008

Time: 04:02 PM

Page 9 of 11

Fifth Judicial District Court - Cassia County

User: TARA

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 223

Michael Tribe objects to the admission of State's Exhibit # 10; cites considerations.

Alfred Barrus argues his motion for admission of State's Exhibit # 10; cites considerations.

Michael Tribe continues his objection.

The Court admits State's Exhibit # 10 with conditions.

The Clerk marks State's Exhibit # 10 as "ADMITTED".

Tape Counter: 225

The State rests.

The Court admonishes the jurors to not discuss this case during break.

Tape Counter: 226

Court in recess.

Tape Counter: 242

Court resumes.

Michael Tribe cites the defendant will not be making an opening statement and the defense rests.

Tape Counter: 244

Court and Counsel review post proof jury instructions.

Tape Counter: 249

Counsel have no additional post proof instructions and have no objections to instructions 10 thru 18.

Tape Counter: 250

Court in recess.

Tape Counter: 307

Court resumes.

Tape Counter: 308

The Court notes that copies of jury instructions 9 thru 18 have been placed in the jury notebooks

Tape Counter: 309

Counsel stipulate the jurors are present and in thier proper seats.

Tape Counter: 310

The Court confirms that the defense rests.

Tape Counter: 310

Court reads aloud the final jury instructions (starting with # 9) as the jurors follow along in their jury notebooks.

Tape Counter: 323

Closing argument by Alfred Barrus on behalf of the State of Idaho.

Date: 9/23/2008

Time 04:02 PM

Page 10 of 11

Fifth Judicial District Court - Cassia County

User: TARA

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 329

Closing argument by Michael Tribe on behalf of the defendant.

Tape Counter: 336

Bailiff sworn by Clerk.

Court reviews small black notebook called Court Instructions and Verdict Form with jurors.
Cites the Presiding juror must sign and date the verdict form.

Jurors taken to the Jury Room for deliberations.

Tape Counter: 337

Court in recess.

Tape Counter: 357

Court Resumes.

Tape Counter: 359

Counsel stipulate jurors are present and in the proper seats.

The Court thanks the jurors for thier service.

Tape Counter: 400

The Court has received and reviewed the jury verdict form.

Tape Counter: 400

Jury Verdict read by the Clerk.

Question No. 1 - YES

Question No. 2 - YES

Question No. 3 - YES

Question No. 4 - YES

Tape Counter: 402

Counsel do not wish to poll the jurors.

Tape Counter: 402

The Court addresses the jurors.

Tape Counter: 403

Judgment of Conviction will be entered and sentencing will be set.

Tape Counter: 405

Michael Tribe requests an updated PSI Report.

The Court orders an updated PSI Report.

The defendant advised of his right to remain silent.

The defendant questions the defendant.

The Court will take a look at both.

Tape Counter: 406

Alfred Barrus addresses the Court re. representation of counsel

The Court addresses Counsel.

000334

Date: 9/23/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 04:02 PM

Minutes Report

Page 11 of 11

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 408

UPDATED PSI Interview set for: Tuesday, September 30, 2008 at 9:00 a.m.

Sentencing set for: October 27, 2008 at 1:30 p.m.

Tape Counter: 409

Hearing concludes.

2007 SEP 23 PM 3:28

Date: 9/23/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 03:31 PM

Minutes Report

Page 1 of 3

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Pending Motions	Minutes date:	09/23/2008
Assigned judge:	John Melanson	Start time:	08:27 AM
Court reporter:	Maureen Newton	End time:	08:27 AM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	Alfred E Barrus		
Defense attorney:	[none]		

Tape Counter: 904 Alfred Barrus is present on behalf of the State of Idaho.

 The defendant is present, pro se.

 Michael Tribe is present as Standby Counsel.

Tape Counter: 905 The Court reviews case; this matter is set for trial this morning; reviews pending motions.

Tape Counter: 906 The Court reviews the defendant's pro se motion re: Disqualification of Judge without cause.

Tape Counter: 907 The defendant Valentino Herrea addresses the Court; argues his motions to Disqualify Judge; cites considerations.

 Michael Tribe reviews the Court's decision denying motion to disqualify dated August 27.

Tape Counter: 909 The Court reviews the Motion to terminate pro se representation.

 The defendant argues his motion to terminate pro se representation; cites considerations.

 Alfred Barrus objects to the defendant's motion to terminate pro se representation; cites considerations.

Tape Counter: 910 Michael Tribe cites he is prepared to represent the defendant at trial; cites considerations.

 The Court cites it will GRANT the defendant's Motion to Terminate pro se representation.

 cites considerations

 The Court inquires of Michael Tribe re: pending pro se motions.

Tape Counter: 911 Michael Tribe cites he is not prepared to argue the defendant's pro se pending motions; requests a continuance; cites considerations.

000336

Date: 9/23/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 03:31 PM

Minutes Report

Page 2 of 3

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 912	Alfred Barrus objects to the motion to continue; cites the defendant is still pro se and requests that the Court have the defendant argue his own motions pro se; cites considerations.
Tape Counter: 913	The defendant addresses the Court; argues his motion to continue and motion to reconsider; cites considerations.
Tape Counter: 918	The Court DENIES the defendant's Motion to Reconsider; cites considerations.
Tape Counter: 919	The Court DENIES the defendant's Motion to Continue; cites considerations.
Tape Counter: 920	The Court now formally appoints Michael Tribe as Counsel of record.
Tape Counter: 920	The Court addresses the defendant re: clothing.
Tape Counter: 921	Michael Tribe addresses the Court re: clothing. The Court notes for the record that the defendant has clean ironed clothing appropriate for Court.
Tape Counter: 922	Michael Tribe addresses the Court re: continuing objection re: continuance. Michael Tribe addresses the Court; argues the defendant's Motion in Limine.
Tape Counter: 924	Alfred Barrus does not wish to be heard re: Motion in Limine. The Court DENIES the defendant's Motion in Limine; cites considerations.
Tape Counter: 925	Alfred Barrus addresses the Court re: intent to discuss prior trial and opening statement for this trial; cites considerations. Michael Tribe does not object to the State's proposed opening statement. Alfred Barrus addresses the Court.
Tape Counter: 927	The Court will permit proposed opening statement; reviews jury instructions. No objection by Michael Tribe; reviews continuing objection.
Tape Counter: 929	Alfred Barrus addresses the Court re: judicial notice of prior cases and transcript; cites considerations.

Date: 9/23/2008

Time: 03:31 PM

Page 3 of 3

Fifth Judicial District Court - Cassia County

User TARA

Minutes Report

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Tape Counter: 930	Michael Tribe cites there is not an objection as long as proper foundations is laid; reviews concerns; cites considerations. Alfred Barrus addresses the Court
Tape Counter: 932	The Court addresses Counsel re: Twin Falls County case. Alfred Barrus addresses the Court re: Twin Falls County case. The Court inquires of the State re: transcript. Alfred Barrus responds.
Tape Counter: 934	Michael Tribe addresses the Court; objects to judicial notice of file; cites considerations and cites the transcript is a different issue.
Tape Counter: 936	The Court inquires of Mr. Barrus re: judicial notice. Alfred Barrus responds; cites he has the original files and certified copies.
Tape Counter: 937	Michael Tribe addresses the Court re: chain of command.
Tape Counter: 938	The Court reviews 201d; The Court grants the State's Motion re: judicial notice; reviews part g of 201; cites considerations.
Tape Counter: 940	Alfred Barrus addresses the Court re: documents to be self authenticated; cites considerations.
Tape Counter: 941	Michael Tribe addresses the Court objects to the Bench warrant and criminal complaint document; cites considerations. Alfred Barrus responds.
Tape Counter: 942	Michael Tribe addresses the Court. Alfred Barrus addresses the Court.
Tape Counter: 943	The Court Permits the documents to be entered; cites considerations.
Tape Counter: 945	Hearing concludes

9/19/08

JURY ROLL CALL SHEET IN DOM SEAT ORDER

PAGE

JUDGE John Melander TIME IN _____CASE CR2006-3507 JURY SELECTED _____TRIAL DATE: 9-23-2008 JURY FINISHED _____ JUDGEMENT _____
VALENTINO ALEX HERRERA(Start: 49 Skip: 55) RANDOM NO ROLL
JUROR# SEAT EXC SHOW CALL VOIR PER CAUSE JURY

DN/0000282 CHRISTENSEN, PAUL	1								
DN/0000298 SEARS, KAYCI ANN	2								
DN/0000267 JENSEN, GRAYDON EARL	3								X
DN/0000343 PARKE, ROBERT RYAN	4								X
DN/0000288 OSTLER, BROOKE ANNE	5								X
DN/0000333 JONES, BRENT MAX	6								
DN/0000181 MOLINA, JOSEPH NEVAREZ	7								X
DN/0000202 WOODWORTH, COURTNEY M	8								X
DN/0000305 ROCHA, JAIME ARIEL	9								X
DN/0000234 GLAESEMANN, ARLA J	10								X
DN/0000290 PATTERSON, ROD CAMERON	11								X
DN/0000157 CHATBURN, TAMERA BENNETT	12								X
DN/0000246 WHEELER, ANTHONY B	13								X
DN/0000184 HALL, MARCIA ANN LIVINGSTON	14								X
DN/0000332 ENNIS, ADAM S	15								X
DN/0000162 MCCLAFLIN, CARL G	16								X
DN/0000164 ANDERSEN, PAMELA KAY	17								X
DN/0000172 PIGFORD, EAN SALVATORE	18								X
DN/0000328 FILLMORE, AMANDA JOY KAISER	19								X
DN/0000287 ORTON, DENNY J	20								X
DN/0000198 BROWN, MICHAEL L	21								X
DN/0000336 GONZALES, REBECCA NEVAREZ	22								X
DN/0000155 MCAFEE, JENNIFER ANDREA	23								X

9/19/08

JURY ROLL CALL SHEET IN RANDOM SEAT ORDER

PAGE

JUDGE John M. ... TIME IN _____CASE CR2006-3507 JURY SELECTED _____TRIAL DATE: 9-23-2008 JURY FINISHED _____ JUDGEMENT _____
VALENTINO ALEX HERRERA

(Start: 49 Skip: 55) RANDOM NO ROLL

JUROR# SEAT EXC SHOW CALL VOIR PER CAUSE JUR

DN/0000318 SMITH, TERENCE LEWIS	24								X
DN/0000210 SORENSEN, RONALD SERN	25								X
DN/0000285 OLSEN, DENISE A	26								X
DN/0000237 REBOLLOZO, JAMIE ANN	27								X
DN/0000291 PAULES, POLLYANE	28								X
DN/0000191 DENTON, PAMELA JO	29								X
DN/0000300 SEARLE, FRANCIS F	30	E							X
DN/0000201 WOODLAND, HEATHER F	31								X
DN/0000250 MUHLESTEIN, KAREN DIANE	32	E							X
DN/0000170 SPELIUS, CHRISTINE ANN	33								X
DN/0000252 REITER, BRYAN DAVID	34								X
DN/0000171 ELFE, RANDY PATRICK	35								X
DN/0000195 PINCOCK, KYMARIE BAKER	36								X
DN/0000340 SNOW, JEANIE	37								X
DN/0000233 BEAN, BARBARA J	38								X
DN/0000154 CLARK, HENRY JAMES	39								X
DN/0000270 COLEMAN, JULIE ANN	40								X
DN/0000260 HALE, LYNETTE BURKE	41								X
DN/0000313 GEE, JOY LYNN	42								X
DN/0000236 ORBAN, RONNIE JO	43								X
DN/0000272 STONE, RANDOLPH C	44								X
DN/0000335 MANGUM, JANET LYNN	45								X
DN/0000279 LARICS, DAVID EDUARDO	46								X

000340

9/19/08

JURY ROLL CALL SHEET IN ROOM SEAT ORDER

PAGE

JUDGE W. A. McVernon TIME IN _____CASE CR2006-3507 JURY SELECTED _____TRIAL DATE: 9-23-2008 JURY FINISHED _____ JUDGEMENT _____
VALENTINO ALEX HERRERA

JUROR#	(Start: 49 Skip: 55)	RANDOM	NO	ROLL	VOIR	PER	CAUSE	JUI
SEAT	EXC	SHOW	CALL					
DN/0000150 DEXTER, SHANNA RAE	47			/				
DN/0000206 MERCER, BENJAMIN WADE	48			/				
DN/0000277 PARKER, KEVIN PAUL	49			/				
DN/0000304 HUBBARD, ALANA RAE	50			/				
DN/0000240 BECK, TY MCKELL	51			/				
DN/0000175 MAIER, NICOLE	52			/				
DN/0000307 LOCKETT, JAMES EARL	53			/				
DN/0000281 HERRERA, ANGELA PRISCILLA	54			/				
DN/0000257 TILLEY, JANET L	55			/				
DN/0000205 LARSON, WARREN JESSE	56			/				
DN/0000204 GARZA, JESUS ERNESTO	57			/				
DN/0000193 HUNSAKER, ANNE MARIE	58			/				
DN/0000286 ROSE, ESTHER GARCIA	59			/				
DN/0000255 WELLS, LENARD MEADOW	60			/				
DN/0000339 BROWN, MARIA CHRISTENSEN	61			/				
DN/0000337 WINMILL, MARO D	62			/				
DN/0000312 FREE, DARRELL R	63			/				
DN/0000239 RICE, JACOB WILLIAM	64			/				
DN/0000177 MAI, TEARLE SPENCER	65			/				
DN/0000161 WICKEL, JUDY M	66			/				
DN/0000301 EVANS JR, JOHN V	67			/				
DN/0000173 SCHORZMAN, KATHRYN A	68			/				
DN/0000223 HAUSER, LEEANA G	69			/				

000341

9/19/08

JURY ROLL CALL SHEET IN RANDOM SEAT ORDER

PAGE

JUDGE John M. [unclear] TIME IN _____CASE CR2006-3507 JURY SELECTED _____TRIAL DATE: 9-23-2008 JURY FINISHED _____ JUDGEMENT _____
VALENTINO ALEX HERRERA

(Start: 49 Skip: 55) RANDOM NO ROLL

JUROR# SEAT EXC SHOW CALL VOIR PER CAUSE JU

DN/0000280 HARRIS, CRAIG L	70							
DN/0000317 JOHNSON, KELBY ALEXANDER	71							
DN/0000165 ANDERSON, TIFFANY	72							
DN/0000203 HEPWORTH, WILLIAM M	73							
DN/0000295 KOYLE, SANDRA DIANE	74							
DN/0000145 YOUNG, ARCHIE ORLO	75							
DN/0000169 BREEDING, SARA HELEN	76							
DN/0000302 FRAZIER, KAREN ELAINE	77							
DN/0000322 ECKLEY, ASHLEY R	78							
DN/0000320 CRITCHFIELD, ROBERT DAREN	79							
DN/0000263 RAMSEY, KARLEE ANNE	80							
DN/0000200 COOPER, JAMES TYLER	81							
DN/0000166 WIDMIER, COLLIN B	82							
DN/0000149 HAWKES, DARBY VELOY	83							
DN/0000274 BRONSON, SARAH JANE	84							
DN/0000224 DAVIDS, ROBIN SUE	85							
DN/0000251 SMITH, CATHERINE	86							
DN/0000294 HEWARD, KURTIS MARION	87							
DN/0000265 JONES, CHARLES W	88							

000342

2006-08-14

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

Case No: CR-2006-0003507 D

PEREMPTORY CHALLENGE

PLAINTIFF'S CHALLENGES

DEFENDANT'S CHALLENGES

Juror #		Seat #	Juror #		Seat #
(15) 1.	Adam Enjo	(1)	(12) 1.	Tamery Chatsurn	()
(27) 2.	Pam Destow	()	(17) 2.	Pamela Anderson	()
() 3.	Pass	()	(28) 3.	Pollyane Paulos	()
() 4.	Pass	()	(34) 4.	Byran Rester	()
() 5.	Pass	()	(40) 5.	Julie Coleman	()
() 6.	Pass	()	(63) 6.	Darrell Tree	()
() 7.	Pass	()	(41) 7.	Lynette Hale	()
() 8.	Pass	()	(77) 8.	Karen Tuzier	()
() 9.	Pass	()	(2) 9.	Kayer Sears	()
() 10.	Pass	()	(48) 10.	Benjamin Meier	()
() 11.		()	() 11.		()
() 12.		()	() 12.		()

District Judge _____

000343

2006 SEP 23 11:41:07

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant

Case No.: CR-2006-3507

JURY VERDICT

"We, the Jury, for our verdict, unanimously answer the questions submitted to us
as follows:

QUESTION NO. 1: On or about the 26th day of February, 1982, was the defendant,
Valentino Alex Herrera, convicted of First Degree Burglary in the County of Cassia, State of
Idaho in Case No. CR 1761-1-82?

ANSWER TO QUESTION NO. 1:

☐ No

☒ Yes

000344

QUESTION NO. 2: On or about the 21st day of November , 1996, was the defendant, Valentino Alex Herrera, convicted of Battery on a Correctional Officer in the County of Cassia, State of Idaho, in Case No. CR-1995-1430*D?

ANSWER TO QUESTION NO. 2:

☐ No

☒ Yes

QUESTION NO. 3: On or about the 21st day of November, 1988, was the defendant, Valentino Alex Herrera, convicted of Aggravated Driving under the Influence in the County of Twin Falls, Idaho, in Case No. 6756.

ANSWER TO QUESTION NO. 3:

☐ No

☒ Yes

QUESTION NO. 4: Based upon your answers to questions 1, 2, and 3, was the Defendant Valentino Alex Herrera convicted of two or more felonies prior to January 4, 2007?

ANSWER TO QUESTION NO. 4:

☐ No

☒ Yes

Dated September 23, 2008

Anthony B. Wheeler

Presiding Juror

INSTRUCTION NO. _____

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge(s) against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 2

This criminal case has been brought by the state of Idaho. I will sometimes refer to the state as the prosecution. The state is represented at this trial by the prosecuting attorney, Mr. Alfred E. Barrus. The defendant, Mr. Valentino Alex Herrera, is represented by Mr. Michael P. Tribe, an attorney. The defendant is charged by the state of Idaho with a violation of the law. The charge against the defendant is contained in the Amended Information. The clerk shall read the Amended Information and state the defendant's plea.

The Information is simply a description of the charge; it is not evidence.

Agree 11/23/18 J. H. H.

INSTRUCTION NO. _____

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

given witness

INSTRUCTION NO. _____

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms "circumstantial evidence," "direct evidence" and "hearsay evidence." Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

Given 11/23/08 Jmm

INSTRUCTION NO. _____

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

given 9/23/08 Jmm

INSTRUCTION NO. _____

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

given 11/23/08 JRM

INSTRUCTION NO. _____

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

given 9/23/85 Dmm

INSTRUCTION NO. _____

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. You should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instruction and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the courtroom on your own. Do not go any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television or other account of what may have happened.

INSTRUCTION NO. 9

The court has taken judicial notice of certain things during the trial even though no other evidence has been introduced on the subject. In other words, the court has decided to accept as conclusive the fact that:

- 1) The following documents are copies of the original documents in the official court files in the cases indicated:
 - Judgment of Conviction dated February 26, 1982, and Bench Warrant dated June 25, 1985, both of which are filed in Cassia County case number 1761-1-82.
 - Judgment of Conviction and Order of Commitment dated November 21, 1996 filed in Cassia County case number CR-1995-1430
 - Criminal Complaint dated August 22, 1988, and Judgment of Conviction dated November 23, 1988, both of which are filed in Twin Falls County case number 6756.
- 2) The transcript to be read into evidence (pages 148-149 and 164) is a copy of a part of the original trial transcript for the trial in Cassia County Case number CR-2006-3507, which was held on January 3rd and 4th, 2007.

You may, but are not required to, accept these facts as true.

Given evidence June

INSTRUCTION NO. 17

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

given 9/23/08 Jmu

INSTRUCTION NO. _____

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

given 9/22/08 Jmm

INSTRUCTION NO. _____

In this case you must decide whether the defendant has previously been convicted of two (2) or more felony offenses prior to _____.

The state alleges the defendant, Valentino Alex Herrera, has prior felony convictions as follows:

1. On or about the 26th day of February, 1982, the defendant was convicted of First Degree Burglary in the County of Cassia, State of Idaho in Case No. CR 1761-1-82, and
2. On or about the 21st day of November, 1996, the defendant was convicted of Battery on a Correctional Officer in the County of Cassia, State of Idaho, in Case No. CR-1995-1430*D, and
3. On or about the 21st day of November, 1988, the defendant was convicted of Aggravated Driving under the Influence in the County of Twin Falls, Idaho, in Case No. 6756.

The existence of a prior conviction must be proved beyond a reasonable doubt and your decision as to each prior conviction must be unanimous.

given 9/23/03 Jmm

INSTRUCTION NO. 12

As used in these instructions, a person is convicted if a judgment of conviction has been entered against him whether as a result of a plea of guilty or a finding of guilt after a trial.

given 1/22/08 Jmm

INSTRUCTION NO. 11

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of

you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

given 4/23/05 Jm

INSTRUCTION NO. _____

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions will apply depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

given 9/23/08 Jmm

INSTRUCTION NO. 16

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

given 9/23/05 JMR

000363

INSTRUCTION NO. 17

In this case you will return a verdict, consisting of a series of questions. Although the explanations on the verdict form are self explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

"We, the Jury, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: On or about the 26th day of February, 1982, was the defendant, Valentino Alex Herrera, convicted of First Degree Burglary in the County of Cassia, State of Idaho in Case No. CR 1761-1-82?

ANSWER TO QUESTION NO. 1:

☐ No

☒ Yes *unanimous*

QUESTION NO. 2: On or about the 21st day of November, 1996, was the defendant, Valentino Alex Herrera, convicted of Battery on a Correctional Officer in the County of Cassia, State of Idaho, in Case No. CR-1995-1430*D?

ANSWER TO QUESTION NO. 2:

☐ No

☒ Yes *unanimous*

QUESTION NO. 3: On or about the 21st day of November, 1988, was the defendant, Valentino Alex Herrera, convicted of Aggravated Driving under the Influence in the County of Twin Falls, Idaho, in Case No. 6756.

ANSWER TO QUESTION NO. 3:

☐ No

☒ Yes *unanimous*

QUESTION NO. 4: Based upon your answers to questions 1, 2, and 3, was the Defendant Valentino Alex Herrera convicted of two or more felonies prior to January 4, 2007?

ANSWER TO QUESTION NO. 4:

☐ No

☒ Yes

The existence of each prior conviction must be proved beyond a reasonable doubt and your answers to questions 1 through 4 must be unanimous.

given 9/23/08 Jmm

INSTRUCTION NO. 2

Upon retiring to the jury room, select one of you as a presiding officer, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

given 9/23/05 J. [signature]

Jury Panel

State of Idaho
Plaintiff

Al Barrus
Prosecuting Attorney

Case No. CR 06-3507

Valentino Alex Herrera
Defendant

Mike Tribe
Defendant's Attorney

Date: Tuesday, September 23, 2008

1 Graydon Earl Jensen	2 Robert Ryan Parke	3 Joseph Nevarez Molina	4 Courtney Woodworth	5 Arla J. Glaesemann	6 Anthony Wheeler
7 Jennifer Andrea McAfee	8 Terence Smith	9 Ronald Sorensen	10 Jamie Rebollozo	11 Heather Woodland	12 Christine Spelius

RESET (Clerk, check if applicable)

ORIGINAL OF THIS DOCUMENT TO IDOC

Assigned to: _____
Assigned: _____ Due Date: _____

UPDATED

Fifth Judicial District Court, State of Idaho
In and For the County of Cassia

STATE OF IDAHO
Plaintiff,

vs.

Valentino Alex Herrera

Defendant.

Case No: CR-2006-0003507

ORDER FOR PRESENTENCE REPORT
AND EVALUATIONS

On this Tuesday, September 23, 2008, a **Pre-sentence Investigation Report** was ordered by the Honorable John Melanson to be completed for Court appearance on **Monday, October 27, 2008 at: 01:30 PM.**

PSI INTERVIEW SET FOR: Tuesday, September 30, 2008 at 9:00 a.m.

EVALUATIONS TO BE DONE: Copy of each evaluation to be sent to Presentence Investigation Office to be included with PSI

Under § 19-2524 the following is (are) ordered which shall include a criminogenic risk assessment of the defendant pursuant to I.C. 19-2524(4):

- ☐ Mental Health Examination as defined in I.C.19-2524(3), including any plan for treatment; and/or
☐ Substance Abuse Assessment which is defined as an evaluation based upon objective evidence to determine whether the defendant meets the definition of a substance abuser (I.C. 39-302(11)), a drug addict (I.C. 39-302(3)) and/or an alcoholic (I.C. 39-302(4)), including any plan of treatment.

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

☐ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator:

PROSECUTOR: County Prosecutor DEFENSE COUNSEL: Michael R. De

THE DEFENDANT IS IN CUSTODY: ☒ YES ☐ NO PLEA AGREEMENT: ☐ YES ☐ NO

CHARGE(s): Count I - Battery on an Officer
Part II - Persistent Violator

found guilty of that

ORDERED IN OPEN COURT

John Melanson
District Judge

DEFENDANT'S INFORMATION: PLEASE PRINT

DO YOU NEED AN INTERPRETER? ☐ YES ☒ NO

Name: Valentino Alex Herrera

☒ Male ☐ Female

Social Security Number: _____

Name & Phone Number of nearest relative:

Date of Arrest: _____ Arresting Agency: _____

Your assigned Pre-sentence Investigator will contact you to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview. (5/2008)

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000369

2008-10-22 10:05

Ug

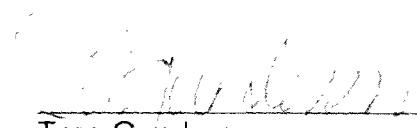
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2006-0003507 D
)	
vs.	)	<u>NOTICE OF HEARING VACATED</u>
	)	<u>AND RESET</u>
)	
VALENTINO ALEX HERRERA,)	
)	
Defendant.)	

NOTICE IS HEREBY GIVEN that the hearing in the above-entitled case, heretofore set at 1:30 p.m., on the 27th day of October, 2008, is hereby vacated; and,

The above-entitled case is RESET for **Monday, October 27, 2008** at **03:30 PM.**

DATED this 22nd day of October, 2008.




Tara Gunderson
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of October, 2008, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Doug Abenroth
Deputy County Prosecutor
P.O. Box 7
Burley, ID 83318
 Fax (208) 878-2924
2. Michael P Tribe
Attorney at Law
P.O. Box 396
Rupert, ID 83350
 Fax (208) 436-6804
3. Minidoka District Court
ATTN: Judge Melanson
P.O. Box 368
Rupert, ID 83350
 Fax (208) 436-5272



Tara Gunderson
Deputy Clerk

Michael P. Tribe, Esq.
 ROBINSON & ASSOCIATES
 Attorneys at Law
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804
 ISB No. 6816

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

VALENTINO ALEX HERRERA,

Defendant.

) Case No. CR 2006-3507

)

)

)

)

)

)

)

)

MOTION TO ARREST JUDGMENT

COMES NOW the defendant, by and through his attorney of record, Michael P. Tribe of the firm Robinson & Associates, and requests that this Court arrest the prior verdicts previously entered in this case.

An arrest of judgment is the Court's staying of a judgment or verdict after its entry. Historically, an arrest of judgment is issued because of a defect apparent from the record. *Black's*

MOTION TO CONTINUE - 1

Law Dictionary 105 (7th ed. 1999). An arrest of judgment under common law is the technical term describing the act of a trial judge refusing to enter judgment on the verdict because of an error appearing on the record that rendered the judgment invalid. *United States v. Sisson*, 339 U.S. 267, 280-81 (1970). When ruling on a motion in arrest of judgment, the trial court is limited to rectifying trial errors, and cannot make a redetermination of the credibility and weight of the evidence. *Com. v. Melechto*, 442 Pa. Super. 231, 658 A.2d 1385 (1995). The granting of a motion in arrest of judgment does not operate as an acquittal, but only places the defendant in the same situation in which he or she was before the prosecution was begun. The defendant has not been in jeopardy. *People v. Allen*, 252 Mich. 553, 233 N.W. 412 (1930); *State v. Just*, 2006 ND 225, 723 N.W.2d 541 (N.D. 2006). Generally, the state is free to proceed against the defendant, if it so desires, upon a new and sufficient indictment. *State v. Stephenson*, 69 Kan. 405, 76 P. 905 (1904); *People v. Allen*, 252 Mich. 553, 233 N.W. 412 (1930); *State v. Just*, 2006 ND 225, 723 N.W.2d 541 (N.D. 2006); *State v. Frankfurth*, 2005 ND 167, 704 N.W.2d 564 (N.D. 2005). *People v. Hughes*, 229 Ill. App. 3d 469, 170 Ill. Dec. 232, 592 N.E.2d 668 (4th Dist. 1992).

In this case, Herrera had two verdicts entered against him. A jury returned the first on January 4, 2007, based upon a finding of guilt upon the charge of Battery Upon Certain Personnel pursuant to Idaho Code section 18-915. A second jury returned a second conviction based upon the persistent violator enhancement on September 23, 2008. Herrera maintains that his due process and equal protection rights have been violated and ignored because he was not given a preliminary hearing on the persistent violator enhancement and that such denial has permeated this case such that he has not been able to make informed decisions about his case and his defense from

the time formal charges were brought through the present.

Herrera maintains that I.C. § 19-2514, the persistent violator statute, should have the same protections found in I.C. § 19-2520. Idaho code § 19-2520 reads:

The additional terms provided in this section shall not be imposed unless the fact of displaying, using, threatening, or attempting to use a firearm or other deadly weapon while committing the crime is separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at the trial of the substantive crime.

The above-mentioned statute provides "the procedure for notice and for enhancement of a sentence imposed for crimes when a firearm is involved. In this case, the state sought enhanced sentencing based on Herrera's prior felony convictions or his status as a persistent violator and the defendant maintains that I.C. § 19-2514 should give the same procedural requirements as I.C. § 19-2520. Prior to his conviction in this case, he was convicted of three prior felonies, which included burglary in 1982, Aggravated Driving Under the Influence in Twin Falls County in 1988, and Battery on a Correctional Officer in Cassia County in 1996. Idaho case law exists holding that I.C. § 19-2514 does not require that notice be given to a criminal defendant at or before the preliminary hearing; section 19-2514 "requires notice only through an allegation in the Information filed in district court." *State v. Campbell*, 114 Idaho 356, 766 P.2d 230(1988). However, the fact that one class of defendants, those charged under I.C. § 19-2520, are treated differently as those charged under I.C. § 19-2514 is the very definition of a due process violation.

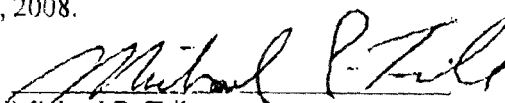
The Idaho Supreme Court promises that all persons in like circumstances should receive the same benefits and burdens of the law. *State v. Breed*, 111 Idaho, 497, 500, 725 P.2d 202, 205

(Ct.App 1986). The defendant did not receive the same procedural equal protections as other similarly situated defendants but should have been. Again, fundamental fairness requires a meaningful opportunity to present a complete defense and this was not given to the defendant.

An additional due process defect was the Court's sue sponte motion to amend the information without any motion by the State on the morning of trial. The State should have been required to notice up the requested amendment and given Herrera the opportunity to be properly arraigned prior to the morning of trial. The record of the proceedings is found at page pp.25-31 of the trial transcript, which is attached bellow as exhibit "A". This defect materially prejudiced Herrera by preventing a proper defense and knowingly plea negotiations prior to the morning of trial.

Therefore, Herrera requests that this Court arrest the convictions and allow a new trial on all the matters before this Court. That such proceeding should include a preliminary hearing on the persistent violator enhancement and allow Herrera a new trial from that point forward.

DATED this 24th day of October, 2008.


Michael P. Tribe
Attorney for Defendant

MOTION TO CONTINUE - 4

000375

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of October, 2008, I served a copy of the foregoing **MOTION TO ARREST JUDGMENT** upon:

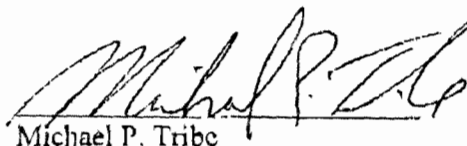
Blaine Cannon
Deputy Prosecuting Attorney
Cassia County
P.O. Box 7
Burley, Idaho 83318

by fax #: (208) 878-2924

Courtesy Copy:
Hon. John Melanson
Resident Chambers
Rupert, Idaho 83350

by fax #: (208) 436-5272

by faxing a copy thereof, then depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.



Michael P. Tribe

1 And also the two motions we have this morning,
 2 Your Honor.
 3 THE COURT: Thank you.
 4 Mr. Cannon?
 5 MR. CANNON: Your Honor, with respect to the
 6 motion to dismiss, not having had a lot of time to respond
 7 to the motion or to have done any research, I think
 8 Mr. Jensen is probably right about the facts as far as Mr.
 9 Herrera not being arraigned on the amended information.
 10 And obviously that was an oversight on the State's part.
 11 Generally we do reschedule an arraignment so that the
 12 defendant is advised of the additional penalties or the
 13 maximum penalty being expanded based on the persistent
 14 violator. But I think as a practical matter, if there is a
 15 problem with that, the court could simply advise Mr.
 16 Herrera of those penalties at this time.

17 Part two of the information does not create a new
 18 offense, it's not an additional charge. And I think there
 19 is case law that supports that and in fact allows the
 20 amending of an information to include the persistent
 21 violator up to right before trial. And I can't remember
 22 the name of the case, but I know that we've dealt with this
 23 issue with Judge Carlson on a different case and he allowed
 24 the State to amend the information. I'm not going to say
 25 it was on the eve of trial, but it was very close. And so

25

1 as a practical matter there's no real prejudice to the
 2 defendant. It's not a new charge, it's not a different
 3 offense. He's been on notice of the amended information
 4 since sometime in September, it would appear from the
 5 record -- or at least his attorney has -- and based on that
 6 he's had time to challenge it or question it.
 7 And I know that when the State did discovery we
 8 gave the defendant copies of those judgments of conviction
 9 at the time we amended the information. And I could flip
 10 through here and find that discovery response, so there's
 11 been some notice with respect to that as well. So if there
 12 is some problem that needs to be cured, I think it could be
 13 cured now simply by advising the defendant of what that
 14 penalty is.

15 As far as the motion to disqualify, again, it's
 16 not something I've had time to research. But my
 17 recollection of the rule -- maybe it's 25 -- is that are
 18 very specific procedural things the defendant needs to do
 19 to disqualify the court for cause, as far as when that
 20 needs to be filed and what needs to be filed, and I don't
 21 believe that has happened.

22 Obviously the defendant was aware of this
 23 potential conflict at least a week or two ago and it could
 24 have filed something then. I think it creates a real
 25 problem to bring this up on the morning of the trial and

26

1 expect everybody to deal with it immediately like this.
 2 There are speedy trial concerns, I think we need to get the
 3 case done today. The State has transported Alan Garrett
 4 from the State Penitentiary for the purpose of this trial,
 5 and it is somewhat disruptive to his programming at the
 6 State Penitentiary to continually bring him back and forth,
 7 or to keep him for too long in the county jail, as I
 8 believe he is up for parole in just a few months. And so
 9 obviously if the court is disqualified the case is going to
 10 be continued, and that creates a problem for the State as
 11 well. Does the court have any questions?

12 THE COURT: No, thank you. Anything further,
 13 Mr. Jensen?

14 MR. JENSEN: Yes, I'd like to respond to a couple
 15 things. It is true that the information was amended and
 16 served on me. Frankly, I don't know why it didn't come to
 17 my attention sooner, myself. I saw the things. But I'm
 18 not sure that we can rely upon the fact that it got filed
 19 and sent to me. And obviously I have a duty to get that
 20 information to Mr. Herrera. I don't know why: Whether it
 21 came across my desk or didn't come across my desk or
 22 whether it just got filed away. But at any rate, the only
 23 way to be sure that Mr. Herrera is aware of his rights is
 24 to, of course, have a motion to amend the complaint and
 25 then to actually advise Mr. Herrera of his rights as would

27

1 be permitted -- or would be done in any other arraignment.
 2 The other side of -- or with regard to the other
 3 motion, Idaho Criminal Rule 25, and I think it's subsection
 4 (d) deals with disqualification, but what it says with
 5 regard to procedural aspects of when that is filed, it says
 6 when you're disqualifying a judge without cause, as I read
 7 the rule today. I didn't read anywhere in the rule about
 8 any procedural requirements with regard to challenging for
 9 cause. And I don't have a perfect memory of the rule, but
 10 as I reviewed it this morning -- because I had that very
 11 same question, because you have to file a motion prior to
 12 any contested hearing, whether it be a pretrial or anything
 13 such as that, and given there's already been one contested
 14 hearing in this case then we wouldn't of course have
 15 complied with the rule. But I didn't see that that applied
 16 to a motion for cause, which I assume could be raised at
 17 any time. That's it, Your Honor. Thank you.

18 THE COURT: Thanks. I'll deal with the motion to
 19 dismiss first. An arraignment was held on the original
 20 complaint, reflected in the court minutes, on August 3rd,
 21 2006, and that original complaint didn't refer to the
 22 enhanced penalty under Idaho Code Section 19-2514,
 23 persistent violator code. That amended information was
 24 filed on September 29th, after the arraignment, of course.

25 At the original arraignment Mr. Herrera was

28

EXHIBIT A

1 informed of the charge against him: That is, battery on
 2 peace officer charge, and was advised of his rights and the
 3 maximum penalty: Five years.
 4 My decision is based on a couple of factors.
 5 One: Idaho Code Section 19-2514 is not a separate
 6 offense. It's described in the cases as a statute that
 7 authorizes an additional sentence if it's found that the
 8 defendant has two or more prior felonies. It's not a
 9 separate charge. The cases do refer to the fact that the
 10 defendant should be informed of part two of the
 11 information: That is, the persistent violator charge. But
 12 I believe that an amendment of this kind could be allowed
 13 even during trial because it's not a separate charge: It's
 14 only a sentencing enhancement based upon prior convictions.
 15 I also note that, as pointed out by Mr. Cannon,
 16 the State filed a response to discovery request also on
 17 September 29th which refers to the defendant's criminal
 18 history, and specifically to the information for the crime
 19 of battery on an officer -- information in Case Number CR
 20 1761-1-02, judgment of conviction in the same case; the
 21 information in Case Number CR 1995-1430(D) and the amended
 22 judgment of conviction in the same case, and also a
 23 judgment of conviction and order commitment in that case;
 24 and finally a judgment of conviction and order of
 25 commitment in Case Number 6756.

29

1 So notwithstanding the lack of a formal
 2 arraignment until now, I think the court will deny the
 3 motion to dismiss. However, I will conduct an arraignment
 4 on the amended charge, just as a formality, before we're
 5 done here this morning.
 6 On the motion to disqualify, I don't remember the
 7 victim in this case -- the alleged victim. Surely I've met
 8 him because I hear cases here occasionally. The bailiffs
 9 that I recall here in Cassia County are Shawn, who's here
 10 this morning, and Spot. I know Spot, and I don't know his
 11 real name even. I assume he's not the victim in this case.
 12 MR. JENSEN: No.
 13 THE COURT: So, you know, I think to start with,
 14 the defendant's mistaken about the relationship I may have
 15 had with the victim in this case, because I just don't
 16 recall him. I might recognize him when I go out there and
 17 see him, but surely there was no relationship that should
 18 give rise to any concern here. I note that criminal rule
 19 25 subpart (b) does set forth certain grounds for
 20 disqualification. One: That the judge or magistrate is a
 21 party or is interested in the action or proceeding. That's
 22 not the case here. Two: That the judge or magistrate is
 23 related to a other party by consanguinity or affinity within
 24 the third degree. According to the rules of law that's
 25 certainly not the case. Three: That the judge or

30

1 magistrate has been attorney or counsel to any party.
 2 That's not the case. Four: That the judge or magistrate's
 3 bias or prejudice for or against any party or that party's
 4 cause in the action. And, frankly, as I said, I don't even
 5 remember the alleged victim here. And if I do recognize
 6 him when I go out there and he's called as a witness, you,
 7 know, it will only be because of incident occasions that
 8 I've come over here to hear cases.
 9 The motion to disqualify will be denied
 10 MR. Herrera: Your Honor, if I may?
 11 THE COURT: Okay.
 12 Off-the-record discussion.
 13 THE COURT: Mr. Herrera, I do need to proceed
 14 with an arraignment on the amended information, and I'll
 15 treat this also as the State's motion to amend the
 16 information to add the allegation regarding Idaho Code
 17 Section 19-2514.
 18 Not perceiving any prejudice to the defendant,
 19 I'll grant the motion to amend.
 20 Mr. Herrera, you've previously been arraigned on
 21 the initial charge of battery on an officer and you were
 22 informed of your rights at that time. You do have the same
 23 rights in this case. I'll read the pertinent parts of the

31

1 information to you: State of Idaho versus Valentino
 2 Herrera, Case Number CR 2006-3507(D). Alfred E. Barrus,
 3 Prosecuting Attorney, in and for the County of Cassia,
 4 State of Idaho, who in the name and by the authority of
 5 said State, prosecutes in its behalf in proper person comes
 6 into said District Court in the County of Cassia, State of
 7 Idaho on September 29, 2006 and gives the court to
 8 understand and be informed that the defendant is accused by
 9 this information of the crime of battery on a correctional
 10 officer, which said crime was committed as follows to-wit:
 11 That the defendant, Valentino Herrera, on or about the 4th
 12 day of June, 2006, in the county of Cassia, State of Idaho,
 13 did batter Alan Garrett by striking Mr. Garrett's face,
 14 where Mr. Garrett formerly was a police officer at the
 15 Cassia County Sheriff's Office, and where the battery was
 16 committed because of Mr. Garrett's former status as a
 17 police officer, all in violation of Idaho Code Section
 18 18-915(d) and 18-903, a felony. The information is signed
 19 by Mr. Cannon as deputy prosecuting attorney.
 20 Part two of the information -- amended
 21 information reads as follows: Persistent Violator
 22 Information, Part Two, Felony, Idaho Code Section 19-2514.
 23 That the defendant, Valentino Alex Herrera, was previously
 24 convicted of the following felonies: First degree
 25 burglary. It's alleged that on or about February 26, 1982,

32

2008 OCT 27 01:42:21

Date: 10/27/2008

Fifth Judicial District Court - Cassia County

User: TARA

Time: 04:20 PM

Minutes Report

Page 1 of 2

Case: CR-2006-0003507

Defendant: Herrera, Valentino Alex

Selected Items

Hearing type:	Sentencing	Minutes date:	10/27/2008
Assigned judge:	John Melanson	Start time:	03:31 PM
Court reporter:	Maureen Newton	End time:	03:31 PM
Minutes clerk:	Tara Gunderson	Audio tape number:	
Prosecutor:	Blaine Cannon		
Defense attorney:	Michael P Tribe		

Tape Counter: 338 The defendant is present and is in custody with Counsel - Michael Tribe.
Blaine Cannon is present on behalf of the State of Idaho.
The Court cites it has read and reviewed the defendant's Motion to Arrest Judgment filed October 24, 2008.

Tape Counter: 339 Michael Tribe addresses the Court; argues the Defendant's Motion to Arrest Judgment; cites considerations.

Tape Counter: 341 Blaine Cannon objects to the defendant's Motion to Arrest Judgment; cites considerations.

Tape Counter: 343 Michael Tribe addresses the Court.
The Court DENIES the defendant's Motion to Arrest Judgment; cites considerations.

Tape Counter: 347 The Court reviews the Amended Information; and history of case.

Tape Counter: 356 The Court has received and reviewed the updated PSI Report.

Tape Counter: 356 No legal reason why judgment should not be imposed this date.
Counsel have no additions and/or corrections to the PSI Report.
Michael Tribe addresses the Court.

Tape Counter: 357 Blaine Cannon addresses the Court; makes recommendations on behalf of the State of Idaho; cites considerations.

Tape Counter: 403 Michael Tribe addresses the Court; makes recommendations on behalf of the defendant; cites considerations.
Michael Tribe presents the Court with Defense Exhibits A & B.

000379

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

THE STATE OF IDAHO,

Plaintiff,

vs.

Valentino Alex Herrera,

Defendant.

DOB: [REDACTED]

Case No. CR-2006-3507 D

JUDGMENT OF CONVICTION AND ORDER OF COMMITMENT

On 10-27-2008 , the time fixed by the Court for pronouncing sentence upon the defendant, the Court noted the presence of the Prosecuting Attorney, Blaine Cannon, and the defendant with his counsel, Michael Tribe.

IT IS ADJUDGED that the defendant was convicted on January 4, 2007 by a jury to the offense of **Count I, Battery on a Police Officer**, as charged in the Information, a violation of Idaho Code §§18-915(d) and 18-903.

On September 23, 2008, the defendant was also found guilty by a jury of being a **Persistent Violator** pursuant to Idaho Code §19-2514.

The Court having asked whether the defendant had any legal cause why Judgment should not be pronounced against the defendant, and no sufficient cause to the contrary having been shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

000380

WHEREAS, the defendant having been adjudged a persistent violator pursuant to Idaho Code §19-2514, which section replaces the maximum penalty for his conviction of Count I with an enhanced sentencing range of not less than five years to life imprisonment;

IT IS HEREBY ORDERED that the defendant be, and is hereby sentenced, pursuant to the Unified Sentencing Act, Idaho Code, Section 19-2513, to the custody of the Idaho State Board of Correction, to be held and incarcerated by such Board, as follows:

Minimum period of confinement: 10 year(s)

Indeterminate period of confinement: 20 year(s)

Total unified term: 30 year(s)

The Court ORDERS as follows:

Court Costs: The defendant shall pay all mandatory court costs in this case.

Credit for time Served: The defendant is given credit for a total of 694 days served prior to the entry of this Judgment.

Restitution: The Court determines that this is an appropriate case for restitution, and a separate order of restitution will be entered in this case.

Idaho DNA and Genetic Marker Database Act of 1996: Pursuant to I.C. §§ 19-5501, et seq., the defendant, having been convicted of one of the enumerated felony offenses stated in I.C. § 19-5506, and in accordance with I.C. § 19-5507(2), is hereby ordered to provide an adequate (I.C. § 19-5508) DNA sample and right thumbprint impression at a department of law enforcement designated location, which sample and impression shall be collected in accordance with the procedures established by the bureau of forensic services. If the defendant is not incarcerated at the time of sentencing, the defendant is hereby further ordered to report within ten (10) working days to the facility designated by the department of law enforcement for the collection of such specimens.

IT IS FURTHER ORDERED that the defendant be committed to the custody of the Sheriff of Cassia County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary, or other facility within the State designated by the State Board of Correction. I.C. § 20-237.

IT IS FURTHER ORDERED that the parties return their respective copies of the presentence investigative reports to the deputy clerk of the court and use of said report shall thereafter be governed by I.C.R. 32(h)(1), (2), and (3).

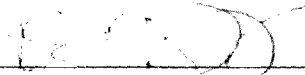
IT IS FURTHER ORDERED that any and all bonds are hereby exonerated. However, if the defendant paid a cash bond, deposited by or on behalf of the defendant, the Clerk shall apply the money (cash bond) to the payment of the costs and fines imposed in this case and refund the surplus, if any, to the party posting the deposit. I.C. § 19-2923.

RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS

The Right: The Court advised the defendant, of the right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.C.R. 33(a)(3), I.A.R. 14(a).

In Forma Pauperis: The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3), I.C. § 19-852(a)(1) and (b)(2).

Sentenced and dated 10-27-2008.



John M. Melanson
District Judge

CERTIFICATE OF MAILING

I, Tara Gunderson, the undersigned authority, do hereby certify that I mailed, by United States Mail on 11/21/13, one copy of the: **JUDGMENT OF CONVICTION AND ORDER OF COMMITMENT** as notice pursuant to Rule 77(d) I.C.R. to each of the following:

Prosecuting Attorney: Blaine Cannon

Defense Counsel: Michael Tribe

Mini-Cassia Criminal Justice Center

Idaho Department of Corrections (certified copy)

Idaho Department of Probation and Parole

Tara Gunderson
Deputy Clerk of the District Court
Cassia County, Idaho

By Tara Gunderson
Deputy Clerk

1 ALFRED E. BARRUS (ISB #1704)

Prosecuting Attorney

2 BLAINE P. CANNON (ISB #5575)

Deputy Prosecuting Attorney

3 DOUGLAS G. ABENROTH (ISB #7181)

Deputy Prosecuting Attorney

4 Cassia County, Idaho

1918 Overland Avenue

Post Office Box 7

Burley, Idaho 83318

Telephone: 208-878-0419

Facsimile: 208-878-2924

5
6 Attorneys for State of Idaho
06-134

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 STATE OF IDAHO,

Case No. CR-2006-03507*D

11 Plaintiff,

ORDER DENYING
DEFENDANT'S MOTION

12 vs.

13 VALENTINO ALEX HERRERA,

14 Defendant.
15 _____

16 The Defendant's Motion to Arrest Judgment having come before this Court on
17 October 27, 2008; the Court having heard argument of counsel for the respective parties; and having
18 been fully advised in the premises;

19 IT IS HEREBY ORDERED that Defendant's Motion to Arrest Judgment, be and
20 hereby is denied in all respects.

21 DATED this 27th day of October, 2008.

22
23 _____
24 District Judge

25
26
27
28 ORDER DENYING DEFENDANT'S MOTION - 1

U:\Shirley\County\Cassia\Mot. Order to Arrest\Defendants Order Deny Motion-Herrera.spd

000384

1
2 **CLERK'S CERTIFICATE OF MAILING**

3 I hereby certify that a true and correct copy of the foregoing Order was mailed,
4 postage prepaid, this _____ day of _____, 20____, to the following:

5 Blaine P. Cannon
6 Deputy Prosecuting Attorney
7 P. O. Box 7
8 Burley, ID 83318

9 Michael Tribe
10 Attorney at Law
11 P.O. Box 396
12 Rupert, Idaho 83350

LARRY A. MICKELSEN
CLERK OF THE DISTRICT COURT

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28
By _____

Deputy Clerk

1 ALFRED E. BARRUS (ISB #1704)
2 *Prosecuting Attorney*
3 BLAINE P. CANNON (ISB #5575)
4 *Deputy Prosecuting Attorney*
5 DOUGLAS G. ABENROTH (ISB #7181)
6 *Deputy Prosecuting Attorney*
7 Cassia County, Idaho
8 1918 Overland Avenue
9 Post Office Box 7
10 Burley, Idaho 83318
11 Telephone: 208-878-0419
12 Facsimile: 208-878-2924

13 Attorneys for State of Idaho
14 06-134

15
16 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
17 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

18 STATE OF IDAHO,

Case No. CR-2006-03507*D

19 Plaintiff,

20 vs.

ORDER OF RESTITUTION

Pursuant to Idaho Code Section 19-5304(2)

21 VALENTINO HERRERA,

22 Defendant.

23
24 This defendant came before the above-entitled Court on the 28TH day of October,
25 2005, for a restitution hearing, and the court determining from the evidence that restitution is owed
26 in the sum of One Thousand Four Hundred Twenty Five and 00/100s Dollars (\$1,425.00) to Cassia
27 County District Court Fund whose address is: 1459 Overland Avenue, Burley, Idaho, 83318.

28
29 **NOW, THEREFORE, IT IS HEREBY ORDERED**, pursuant to Idaho Code,
30 Section 19-5304(2), that Cassia County has and recover judgment against the defendant in the sum
31 of (\$1,425.00) plus interest at the rate of 10.125% per annum, and that this sum is due and payable
32 during the period of probation. This Order of Restitution is imposed as part of the Defendant's
33 overall punishment and rehabilitation.

34
35 **IT IS FURTHER ORDERED** that after forty two (42) days from the entry of this
36 Order of Restitution, or at the conclusion of a hearing to reconsider an order of restitution,
37 whichever occurs later, this Order of Restitution may be recorded as a judgment, and the
38 victim herein may execute as provided by law for civil judgments.

ORDER OF RESTITUTION -1

It is ordered that the County Criminal Return to the Defendant's Order Restitution be recorded as a judgment.

000386

1 DATED this 11th day of March, 2008.

2
3 John Melanson
4 District Judge

5 **CLERK'S CERTIFICATE OF MAILING**

6 I hereby certify that a true and correct copy of the foregoing Order for
7 Restitution was mailed, postage prepaid, this 11th day of March, 2008, to the
8 following:

9 Blaine Cannon
10 Deputy Prosecuting Attorney
11 P.O. Box 7
12 Burley, ID 83318

13 Michael Tribe
14 Attorney at Law
15 P.O. Box 396
16 Rupert, Idaho 83350

17 *(certified copy - victim)*
18 Cassia County
19 Attention: Auditor
20 (District court Fund 106)
21 1459 Overland Avenue
22 Burley, Idaho 83318

23 *(if applicable)*
24 Probation and Parole
25 1354 Albion Avenue
26 Burley, Idaho 83318

27 Department of Corrections
28 Attention: Shirley / Inmate Accounts Garnishment
1299 North Orchard Street, Suite 110
Boise, Idaho 83706
fax: 208-324-7410

LARRY A. MICKELSEN
CLERK OF THE DISTRICT COURT

By [Signature]

Deputy Clerk

ORDER OF RESTITUTION -2

Shawto County Criminal Reformatory Detention Order for Restitution Garnishment

000387

1 **ALFRED E. BARRUS** (ISB #1704)
Prosecuting Attorney
2 **BLAINE P. CANNON** (ISB #5575)
Deputy Prosecuting Attorney
3 **DOUGLAS G. ABENROTH** (ISB #7181)
Deputy Prosecuting Attorney
4 **Cassia County, Idaho**
1918 Overland Avenue
Post Office Box 7
Burley, Idaho 83318
Telephone: 208-878-0419
Facsimile: 208-878-2924

6 Attorneys for State of Idaho
06-134

7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

10 **STATE OF IDAHO,**

Case No. CR-2006-03507*D

11 Plaintiff,

12 vs.

ORDER OF RESTITUTION

Pursuant to Idaho Code Section 19-5304(2)

13 **VALENTINO HERRERA,**

14 Defendant.

15 This defendant came before the above-entitled Court on the 27TH day of October,
16 2008, for a restitution hearing, and the court determining from the evidence that restitution is owed
17 in the sum of One Hundred Fifty Five and 94/100s Dollars (\$155.94) to the Mini-Cassia Criminal
18 Justice Center whose address is: 1415 Albion Avenue, Burley, Idaho, 83318.

19 **NOW, THEREFORE, IT IS HEREBY ORDERED**, pursuant to Idaho Code,
20 Section 19-5304(2), that the Mini-Cassia Criminal Justice Center has and recover judgment against
21 the defendant in the sum of (\$155.94) plus interest at the rate of 10.125% per annum, and that this
22 sum is due and payable during the period of probation. This Order of Restitution is imposed as part
23 of the Defendant's overall punishment and rehabilitation.

24 **IT IS FURTHER ORDERED** that after forty two (42) days from the entry of this
25 Order of Restitution, or at the conclusion of a hearing to reconsider an order of restitution,
26 whichever occurs later, this Order of Restitution may be recorded as a judgment, and the
27 victim herein may execute as provided by law for civil judgments.
28


ORDER OF RESTITUTION -1

1. Signed by Court and filed with the Court's Order of Restitution-Herrera-MUG-07-09-08

000388

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DATED this 31st day of October, 2008


John Melanson
District Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order for Restitution was mailed, postage prepaid, this 1st day of November, 2008, to the following:

Blaine Cannon
Deputy Prosecuting Attorney
P.O. Box 7
Burley, ID 83318

Michael Tribe
Attorney at Law
P.O. Box 396
Rupert, Idaho 83350

(certified copy - victim)
Mini-Cassia Criminal Justice Center
1415 Albion Avenue
Burley, Idaho 83318
(Medical for Alan Garrett)

(if applicable)
Probation and Parole
1354 Albion Avenue
Burley, Idaho 83318

Department of Corrections
Attention: Shirley / Inmate Accounts Garnishment
1299 North Orchard Street, Suite 110
Boise, Idaho 83706
fax: 208-324-7410

LARRY A. MICKELSEN
CLERK OF THE DISTRICT COURT

By 
Deputy Clerk

ORDER OF RESTITUTION -2

H:\Sqaite\County Criminal Restitution - Defendants Order & Return to Merit-MCCJC.rpt

000389

Michael P. Tribe, Esq.
ROBINSON & ASSOCIATES
Attorneys at Law
P. O. Box 296
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 6816

100

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,	)	Case No. CR 2006-3507
)	
Plaintiff,)	
)	
vs.	)	MOTION FOR APPOINTMENT OF
	)	STATE APPELLATE PUBLIC DEFENDER
VALENTINO ALEX HERRERA,)	
)	
Defendant.)	

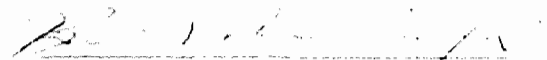
COMES NOW Michael P. Tribe, Court appointed Public Defender for the Defendant in the above-entitled action, and moves the Court for an Order appointing the Idaho State Appellate Public Defender's Office to represent the Defendant, Valentino Alex Herrera, in all matters relating to Defendant's appeal to the Idaho Supreme Court, a Notice of Appeal having been filed with the Clerk of the above Court on December 4, 2008.

WITNESSE MY HAND AND SEAL
this 11th day of December, 2008.

000390

This motion is based on the record, documents and pleadings on file herein, together with the law in such cases made and provided.

DATED this 16th day of December, 2008.


Michael P. Tribe
Attorney for Defendant

CERTIFICATE OF MAILING


I hereby certify that on the 16th day of December, 2008, I served a copy of the foregoing **Motion for Appointment of State Appellate Public Defender** upon:

Blaine Cannon
Deputy Prosecuting Attorney
Cassia County
P.O. Box 7
Burley, Idaho 83318

Lawrence Wasden
Idaho Attorney General
Statehouse Mail
Boise, Idaho 83720

Molly Huskey
State Appellate Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.


Michael P. Tribe

Michael P. Tribe, Esq.
ROBINSON & ASSOCIATES
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 6816

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,)	Case No. CR 2006-3507
)	
Plaintiff,)	
)	
vs.	)	ORDER FOR APPOINTMENT OF
	)	STATE APPELLATE PUBLIC DEFENDER
VALENTINO ALEX HERRERA,)	
)	
Defendant.)	

This matter having come before the Court on the defendant's *Motion for Appointment of State Appellate Public Defender*, and the Court being fully advised in the premises and for good cause appearing,

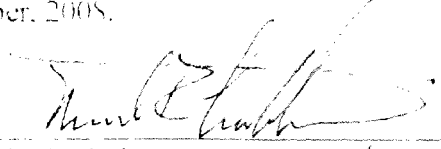
IT IS HEREBY ORDERED that the Idaho State Appellate Public Defender's Office is appointed to represent the Defendant, Valentino Alex Herrera, in all matters relating to

CLERK OF DISTRICT COURT
COUNTY OF CASSIA, IDAHO

000392

Defendant's appeal to the Idaho Supreme Court.

DATED this 19th day of December, 2008.


District Judge *for Judge Melanson*

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 22 day of December, 2008, I served a copy of the foregoing **Order for Appointment of State Appellate Public Defender** upon:

Blaine Cannon
Deputy Prosecuting Attorney
Cassia County
P.O. Box 7
Burley, Idaho 83318

Lawrence Wasden
Idaho Attorney General
Statehouse Mail
Boise, Idaho 83720

Molly Huskey
State Appellate Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703

Michael P. Tribe
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, Idaho 83350

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing addresses.

CLERK OF THE COURT

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff Respondent,

vs.

VALENTINO ALEX HERRERA,

Defendant/Appellant.

)
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Case No. CR 2006-3507

NOTICE OF APPEAL

**TO: THE ABOVE NAMED RESPONDENT, THE STATE OF IDAHO, AND THE
CLERK OF THE ABOVE-ENTITLED COURT:**

NOTICE IS HEREBY GIVEN THAT:

1. The above named Defendant Appellant, Valentino Alex Herrera, appeals against the above named Plaintiff Respondent to the Idaho Supreme Court from the Judgment of Conviction and Order of Commitment entered in the above-entitled action on the 27th day of October, 2008, The Honorable John Melanson presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or order described in paragraph one (1) above is an appealable order pursuant to Idaho Appellate Rule 11(c)(1-10).

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, are:

a. The complaining victim was not a police or law enforcement officer as required by Idaho Code 18-915(d) and the Court erred by not denying the appellant's motion to dismiss on such grounds.

NOTICE OF APPEAL

000394

- b. The Court erred in dismissing the appellant's Motion to Continue filed December 26, 2006, because the appellant's speedy trial rights were not in jeopardy.
- c. The Court was procedurally without authority to discuss appellant's motions to dismiss Persistent Violator Charge. Such procedure violation constitutes reversible error.
- d. The Court was in error to refuse disqualifying itself once its relationship to the complaining witness was disclosed.
- e. The Court erred in dismissal of appellant's Motion to Disqualify the Court.
- f. The Court erred in denying appellant's Motion for a New Trial filed by appellant pro se.
- g. The Court was in error to discuss appellant's Motion to Strike or Suppress Psychological Examination.
- h. The Court was in error to deny appellant's Motion to Strike Persistent Violator Charge as the appellant's prior convictions should not be considered for the purposes of the Persistent Violator enhancement.
- i. The Court was in error to deny Motion for Bail Pending Appeal. This issue can be automatically appealed to the Court of Appeals to rule on and appellant asks for a timely ruling on this issue.
- j. The Court was in error in denying appellant's right to object to State's attorney forcing appellant to read from exhibits ruled by court as inadmissible evidence.
- k. The Court was in error in not recalling if there had been a previous ruling in this matter.
- l. The Court was in error to overrule appellant's objection to State's closing arguments where state claimed it is the appellant's duty to show reasonable doubt as to his innocence, placing the burden upon the appellant and relieving the State of its burden to convict the appellant.
- m. State vouched for its witnesses at trial and thus committed reversible error.
- n. State engaged in prosecutorial misconduct by forcing appellant to call State law enforcement officer Deputy Sheriff Tim Pethiel a liar.

- o. State forced appellant to call Cassia County under Sheriff Cary Bristol a liar.
- p. State forced appellant to call State's witness in chief Alan Garrett, and State's witness Roger Galow liars.
- q. State attorney engaged in misconduct by forcing appellant to read documents in the presence of the jury that the State knew was inadmissible and contrary to the Courts prior ruling.
- r. State misstated evidence in closing arguments as to the testimony on record by Alan Garrett.
- s. The Court erred in ruling on appellant's objection to State's misconduct.
- t. Counsel for the appellant was ineffective and prejudiced the appellant when counsel did not object to the misconduct by the Court or to the State's stipulation to not introduce nature or circumstances to prior convictions.
- u. State untimely filed Amended Information, which was permitted by the Court.
- v. Appellant's Counsel did not object to admission of unlawful touching.
- w. Appellant's Counsel failed to object to State's vouching for State's witnesses.
- x. Appellant's Counsel failed to object to State's misconduct in forcing Appellant's to call prosecution witnesses liars.
- y. Appellant's Counsel did not advise appellant of Amended Information or its consequences for the appellant's case.
- z. State attorney did not inform appellant of the Amended Information filed on September 29, 2006.
- aa. Appellant was not arraigned on Amended Information in a timely manner.
- bb. The Court was in error to omit "unlawful touching" from Jury Instruction 13.
- cc. Prior convictions are invalid and should not have been admitted to find the appellant guilty of the persistent violator enhancement.
- dd. Counsel failed to ask for continuance under Idaho Criminal Rule 10(e).
- ee. The Court ordered restitution at sentencing in violation of Idaho Code § 19-5304(2).

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Presentence Investigation Report and the addendum Presentence Investigation Report.

5. The appellant requests the preparation of the entire reporters standard transcript as defined in I.A.R. 25(a). The appellant also requests the preparation of the following portion of the reporter's transcript:

- i. Preliminary Hearing, July 14, 2006;
- ii. Motion to Dismiss, December 18, 2006, (Audio Requested);
- iii. Motion to Continue, December 29, 2006;
- iv. Jury Trial, January 3-4, 2007;
- v. Sentencing, April 16, 2007, (Audio Requested);
- vi. Jury Trial (Persistent Violator), September 23, 2008;
- vii. Sentencing (Persistent Violator), October 27, 2008.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under I.A.R. Rule 28(b)(2),

- a. July 14, 2006 - Audiotape of Court Minutes for the Preliminary Hearing;
- b. July 14, 2006 - Arraignment Sheet on amended charge;
- c. August 3, 2006 - Hearing result for Arraignment;
- d. August 24, 2006 - Hearing result for Entry of Plea;
- e. August 24, 2006 - Court Minutes - Entry of Plea;
- f. September 15, 2006 - Transcript for Status Conference;
- g. October 19, 2006 - Motion to Dismiss;
- h. October 20, 2006 - Hearing on Pretrial Conference;
- i. October 24, 2006 - Court Minutes and reporter's transcript - Court

Disqualifies itself:

j. December 18, 2006 - Reporter's transcripts for Pretrial Conference and Motion to Dismiss;

k. December 29, 2006 - Hearing result for Motion to Dismiss;

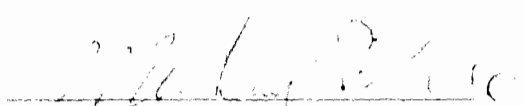
- l. January 3-4, 2007 – Transcripts of Jury Trial, jury instructions, exhibits and jury verdict.
- m. January 19, 2007 – Letter – Presentence Investigator;
- n. March 13, 2007 – Letter;
- o. March 15, 2007 – Letter from appellant to Judge;
- p. March 22, 2007 – Letter;
- q. May 1, 2007 – Motion for Appointment of New Counsel – Affidavit in Support of Motion for Appointment of New Counsel;
- r. November 1, 2007 – Court Minutes: Rule 35 / Motion for Restitution Hearing date;
- s. January 8, 2008 – Court Minutes and reporter's transcript: Sentencing;
- t. January 8, 2008 – Order Appointing Counsel;
- u. January 23, 2008 – Letter Received from appellant;
- v. January 29, 2008 – Letter Received from appellant re: filing of motion;
- w. March 14, 2008 – Minutes and transcripts for Status conference;
- x. May 8, 2008 – Letter received from appellant;
- y. May 12, 2008 - Letter received from appellant;
- z. May 19, 2008 – 180 Day Review Evaluation Report;
- aa. May 19, 2008 – Transcript for Hearing;
- bb. May 19, 2008 - Letter received from appellant;
- cc. May 23, 2008 - Letter received from appellant;
- dd. June 3, 2008 - Letter received from appellant;
- ee. June 9, 2008 – State's Memorandum opposing pro se motions;
- ff. June 9, 2008 - Court Minutes and reporter's transcript for Pending Motions - Sentencing Hearing date;
- gg. September 5, 2008 -- Notice of Hearing -- appellant's Motion for Appointment of New Counsel;
- hh. September 5, 2008 – Court Minutes and reporter's transcript of Status hearing;

- ii. September 5, 2008 – Order DENYING Motion for Appointment of New Counsel;
- jj. September 18, 2008 – Court Minutes and reporter's transcript Status Motion;
- kk. September 22, 2008 – Notice of Hearing re: Disqualification of Judge;
- ll. September 22, 2008 – Memorandum in Support of Motion to Reconsider Motion to Dismiss Part II Amended Information and Memorandum in Support of Motion to Dismiss Count II Persistent Violator Status from Amended Information and Motion in Limine;
- mm. September 23, 2008 – Court Minutes: appellant's Pending Motions;
- nn. September 23, 2008 – Court Minutes: Jury Trial Hearing;
- oo. September 23, 2008 – Peremptory Challenge;
- pp. September 23, 2008 – Seating Chart;
- qq. September 23, 2008 – Jury Instructions;
- rr. September 23, 2008 – Jury Verdict;
- ss. October 24, 2008 – Motion to Arrest Judgment;
- tt. October 27, 2008 – Transcript of Sentencing;
- uu. November 4, 2008 – Order Denying Motion to Arrest Judgment.

6. I certify:

- a. That a copy of this Notice of Appeal has been served on the reporter(s);
- b. That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code 31-3220, 31-3220A, I.A.R. 24(c));
- c. That there is no appellate filing fee because this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- d. That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 3rd day of December, 2008.


Michael P. Tribe
Attorney for Defendant Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of December, 2008, I served a copy of the foregoing **Notice of Appeal** upon:

Valentino Herrera
Inmate # 18269
ICC J-209-A
P.O. Box 710
Boise, Idaho 83707

Lawrence Wasden
Attorney General of Idaho
PO Box 83720
Boise, ID 83720

Blaine Cannon
Deputy Prosecuting Attorney,
Cassia County
P.O. Box 7
Burley, Idaho 83318

Denise Schloder
Court Reporter
1459 Overland Ave
Burley, ID 83318

Maureen Newton
Court Reporter
8th and G Street
PO Box 368
Rupert, ID 83318

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.


Michael P. Tribe

State of Idaho vs. Valentino Alex Herrera

Date	Code	User		Judge
6/20/2006	NEWC	CONNIE	New Case Filed	Michael R Crabtree
	CRCO	CONNIE	Criminal Complaint	Michael R Crabtree
	AFPC	CONNIE	Affidavit Of Probable Cause	Michael R Crabtree
	ARRN	CONNIE	Felony - First Appearance Arraignment Sheet	Michael R Crabtree
	CMIN	CONNIE	Court Minutes	Michael R Crabtree
	BOND	CONNIE	Bond Set @: \$2,500.00	Michael R Crabtree
	MENT	CONNIE	Minute Order on Arraignment	Michael R Crabtree
	ORPD	CONNIE	Order Appointing Public Defender & Notice of Hearing	Michael R Crabtree
	ORDR	KRAMER	Order	John Melanson
6/21/2006	BNDS	HOXSEY	Bond Posted - Surety (Amount 2500.00)	Michael R Crabtree
	HRSC	CONNIE	Hearing Scheduled (Preliminary 06/30/2006 09:00 AM)	Michael R Crabtree
6/23/2006	MOTN	CARPENTE	Motion to Permit Attorney to Withdraw	Michael R Crabtree
	ORDR	CONNIE	Order Permitting Attorney to Withdraw	Michael R Crabtree
	SUBR	POLLARD	Subpoena Returned - Alan Garrett	Michael R Crabtree
	SUBR	POLLARD	Subpoena Returned - Roger A. Galow	Michael R Crabtree
6/28/2006	SUBR	POLLARD	Subpoena Returned - Timothy Pethtel	Michael R Crabtree
7/30/2006	WAIV	CONNIE	Waiver of Timely Preliminary Hearing	Michael R Crabtree
	CONT	CONNIE	Continued (Preliminary 07/14/2006 09:00 AM)	Michael R Crabtree
		CONNIE	Notice Of Hearing	Michael R Crabtree
7/5/2006	AMCO	CARPENTE	Amended Complaint Filed	Larry Duff
	HRSC	CARPENTE	(Arraignment 07/14/2006 09:00 AM)	Michael R Crabtree
7/3/2006	SUBR	CONNIE	Subpoena Returned_T. Pethtel	Michael R Crabtree
7/7/2006	SUBR	HOXSEY	Subpoena Returned-A Garrett	Michael R Crabtree
	SUBR	HOXSEY	Subpoena Returned-R Galow	Michael R Crabtree
7/4/2006	CMIN	CONNIE	Court Minutes Hearing type: Preliminary Hearing date: 7/14/2006 Time: 11:20 am Audio tape number: #8 mag	Michael R Crabtree
	ARRN	CONNIE	Arraignment Sheet on amended charge	Michael R Crabtree
	DPRO	CONNIE	Dismissed by the Prosecutor (118-907 Battery-aggravated) Count I	Michael R Crabtree
	PHHD	CONNIE	Hearing result for Preliminary held on 07/14/2006 09:00 AM: Preliminary Hearing Held	Michael R Crabtree
	BOUN	CONNIE	Bound Over (after Prelim)	Michael R Crabtree
	ORDR	CONNIE	Order of Transmittal to the District Court	Michael R Crabtree
	INFO	POLLARD	Information for the Crime of Battery on an Officer	John Melanson
	HRSC	TARA	Hearing Scheduled (Arraignment 08/03/2006 01:30 PM)	Monte B Carlson
	NOHR	TARA	Notice of Hearing - ARRAIGNMENT000401	Monte B Carlson

Date: 3/10/2009

Time: 08:36 AM

Page 2 of 13

F Judicial District Court - Cassia County

User: SUTHERLAND

ROA Report

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
8/3/2006	HRHD	TARA	Hearing result for Arraignment held on 08/03/2006 01:30 PM: Hearing Held
	CMIN	TARA	Court Minutes - Set for Entry of Plea
8/7/2006	HRSC	TARA	Hearing Scheduled (Entry of Plea 08/24/2006 01:30 PM)
	NOHR	TARA	Notice of Hearing - Entry of Plea
8/24/2006	HRHD	TARA	Hearing result for Entry of Plea held on 08/24/2006 01:30 PM: Hearing Held
	CMIN	TARA	Court Minutes - Appeared & Plead NOT GUILTY
8/28/2006	HRSC	TARA	Hearing Scheduled (Status 09/15/2006 03:00 PM)
	ORPM	TARA	Order In Re: Pre-trial Motions
	RDIS	POLLARD	Request For Discovery
8/29/2006	MOTN	POLLARD	Motion for Preliminary Hearing Transcript
	ORDR	POLLARD	Order for Preliminary Transcript
9/15/2006	HRHD	TARA	Hearing result for Status held on 09/15/2006 03:00 PM: Hearing Held
9/19/2006	MENT	TARA	Minute Entry (09/15/06)
	HRSC	TARA	Hearing Scheduled (Jury Trial 10/25/2006 09:00 AM) # 2 SET / 2 DAYS
	HRSC	TARA	Hearing Scheduled (Pretrial Conference 10/20/2006 01:15 PM)
9/21/2006	ORPC	TARA	Order Re: Pretrial Conference
	ORTS	TARA	Order Re: Notice of Trial Setting & Jury Instructions
	NOSE	APAREDES	Notice Of Service
9/28/2006	SRDR	POLLARD	State's Response To Discovery Request
9/29/2006	TRAN	TARA	Transcript Filed - Prelim July 14, 2006
	MOTN	POLLARD	Motion to Transport
	AMND	POLLARD	Amended Information for the Crime of: Battery on an Officer
10/2/2006	ORDR	POLLARD	Order of Transport
10/3/2006	SUBR	POLLARD	Subpoena Returned - Daniel Mason Henrie
	SUBR	POLLARD	Subpoena Returned - Timothy Pethel
	SUBR	POLLARD	Subpoena Returned - Roger A. Galow
	SUBR	POLLARD	Subpoena Returned - Cassia Regional Medical Center
10/4/2006	SSDR	POLLARD	State's Supplemental Discovery Response
10/11/2006	SUBR	POLLARD	Subpoena Returned - Alan Garrett
10/19/2006	MOTN	POLLARD	Motion for Shortening Time and Notice of Hearing
	MTDI	POLLARD	Motion To Dismiss

000402

Date: 3/10/2009



User: SUTHERLAND

Time: 08:36 AM

ROA Report

Page 3 of 13

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User		Judge
10/20/2006	HRHD	POLLARD	Hearing result for Pretrial Conference held on 10/20/2006 01:15 PM: Hearing Held	Monte B Carlson
10/23/2006	MENT	POLLARD	Minute Entry	Monte B Carlson
10/24/2006	CMIN	POLLARD	Court Minutes - Court Disqualifies Himself	Monte B Carlson
10/25/2006	CONT	POLLARD	Hearing result for Jury Trial held on 10/25/2006 09:00 AM: Continued # 2 SET / 2 DAYS	Monte B Carlson
	DISA	POLLARD	Disqualification Of Judge - Automatic	Monte B Carlson
10/27/2006	ORDR	TARA	Order of Assignment - JUDGE MELANSON	Monte B Carlson
	HRSC	TARA	Hearing Scheduled (Motion 11/27/2006 08:30 AM) MOTION TO DISMISS IN CASSIA COUNTY	John Melanson
	NOHR	TARA	Notice of Hearing - Motion to Dismiss	John Melanson
11/9/2006	MOTN	POLLARD	Motion for Attorney's Fees	John Melanson
11/22/2006	ORDR	POLLARD	Order for Attorney's Fees	John Melanson
12/5/2006	CONT	TARA	Continued (Motion 12/18/2006 09:00 AM) MOTION TO DISMISS IN MINIDOKA	John Melanson
	NOHR	TARA	Notice of Hearing - Motion to Dismiss	John Melanson
	CONT	TARA	Continued (Motion 12/18/2006 03:00 PM) MOTION TO DISMISS IN MINIDOKA	John Melanson
	ANOH	TARA	Amended Notice Of Hearing - Motion to Dismiss	John Melanson
12/7/2006	MOTN	CONNIE	Motion for Attorney Fees	John Melanson
12/13/2006	ORDR	POLLARD	Order for Attorney's Fees	John Melanson
12/14/2006	HRSC	TARA	Hearing Scheduled (Pretrial Conference 12/18/2006 03:00 PM)	John Melanson
	HRSC	TARA	Hearing Scheduled (Jury Trial 01/03/2007 09:00 AM) # 1 set / 3 days	John Melanson
	ORPT	POLLARD	Order Re: Pretrial Conference	John Melanson
	ORTS	POLLARD	Order Re: Notice of Trial Setting & Jury Instructions	John Melanson
12/18/2006	HRHD	POLLARD	Hearing result for Pretrial Conference held on 12/18/2006 03:00 PM: Hearing Held	John Melanson
	HRHD	POLLARD	Hearing result for Motion held on 12/18/2006 03:00 PM: Hearing Held MOTION TO DISMISS IN MINIDOKA	John Melanson
20/2006	CMIN	POLLARD	Court Minutes - Motions DENIED	John Melanson
	ORDR	POLLARD	Order Denying Defendant's Motion to Dismiss	John Melanson
	MOTN	POLLARD	Motion for Order of Transport	John Melanson
	ORDR	POLLARD	Order of Transport	John Melanson
	SSDR	POLLARD	Second State's Supplemental Discovery Response	John Melanson
3/2006	MOTC	TARA	Motion To Continue Hearing	John Melanson

000403

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
12/26/2006	HRSC	TARA	Hearing Scheduled (Motion 12/29/2006 09:00 AM) Motion to Continue
	NOHR	TARA	Notice of Hearing - Motion to Continue
12/28/2006	SUBR	POLLARD	Subpoena Returned - Cary Grant Bristol
12/29/2006	SUBR	POLLARD	Subpoena Returned - Roger Galow
	HRHD	POLLARD	Hearing result for Motion held on 12/29/2006 09:00 AM: Hearing Held Motion to Continue - DENIED
1/2/2007		TARA	Plaintiff's Requested Jury Instructions
1/3/2007	SUBR	POLLARD	Subpoena Returned - Tim Pethel
	SSDR	POLLARD	Third State's Supplemental Discovery Response
	JTST	POLLARD	Hearing result for Jury Trial held on 01/03/2007 09:00 AM: Jury Trial Started # 1 set / 3 days
	PCHA	POLLARD	Peremptory Challenge
	JURY	POLLARD	Jury List***roll Call
		POLLARD	Initial jury seating
	JFSA	POLLARD	Jury Final Seating Arrangement
1/4/2007	HRSC	POLLARD	Hearing Scheduled (Sentencing 02/13/2007 08:30 AM)
	NOHR	POLLARD	Notice of Hearing - Sentencing
	EXFI	POLLARD	Exhibit Filed: State
	EXFI	POLLARD	Exhibit Filed: - Defense
		POLLARD	Jury Trial Witness List
	VERD	POLLARD	Verdict Of The Jury
	CMIN	POLLARD	Court Minutes - Guilty by Jury
	OPSI	POLLARD	Order to Attend PSI Interview & Appear for Sentencing
	ORDR	POLLARD	Order Revoking Bond
1/19/2007	LETR	POLLARD	Letter Recieved - Presentence Investigator
1/24/2007	ORDR	TARA	Order Psychological Evaluation (at County Expense)
2/2007	MOTN	POLLARD	Motion and Order of Transport
5/2007	CONT	TARA	Continued (Sentencing 03/13/2007 08:30 AM)
	ANOH	TARA	Amended Notice Of Hearing - Sentencing
12/2007	CMIN	POLLARD	Court Minutes - From 12-29-06 - Motion to Continue was Denied
1/2007	MOTN	POLLARD	Motion for Attorney's Fees
	ORDR	POLLARD	Order for Attorney's Fees
3/2007		POLLARD	Psychological Evaluation Filed Dated 2-21-07
3/2007	PRES	TARA	Pre-Sentence Investigation Report

Date: 3/10/2009

Judicial District Court - Cassia County

User: SUTHERLAND

Time: 08:36 AM

ROA Report

Page 5 of 13

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User		Judge
3/13/2007	LETR	POLLARD	Letter Recieved	John Melanson
3/15/2007	LETR	TARA	Letter Recieved from defendant to Judge	John Melanson
3/16/2007	MOTN	POLLARD	Motion for Attorney's fees	John Melanson
	PRES	KRAMER	Addendum to Pre-Sentence Investigation Report	John Melanson
3/20/2007	ORDR	POLLARD	Order for Attorney's Fees	John Melanson
3/22/2007	CONT	TARA	Continued (Sentencing 04/16/2007 08:30 AM) IN CASSIA	John Melanson
		TARA	Notice of Hearing - Sentencing	John Melanson
	LODG	POLLARD	Lodged - Letter	John Melanson
4/13/2007	MOTN	POLLARD	Motion to Withdraw as Defendant's Attorney	John Melanson
	MOTN	POLLARD	Motion for New Trial, Striking of the Presentence Addendum, Striking of Psychological Examination and Petition for New Examination, Motion to Strike Persistent Violator Charge	John Melanson
4/16/2007	HRHD	POLLARD	Hearing result for Sentencing held on 04/16/2007 08:30 AM: Hearing Held IN CASSIA	John Melanson
	CMIN	POLLARD	Court Minutes - Sentence IMPOSED	John Melanson
	ORCM	POLLARD	Order Of Commitment	John Melanson
	FOGT	POLLARD	Found Guilty After Trial (I18-915 {F} Assault Or Battery Upon Certain Personnel)	John Melanson
	FOGT	POLLARD	Found Guilty After Trial (I19-2514 Enhancement-persistent Violator)	John Melanson
4/18/2007	HRSC	TARA	Hearing Scheduled (Motion 05/14/2007 08:30 AM) IN CASSIA	John Melanson
	MOTN	TARA	Motion for Restitution	John Melanson
	NOHR	TARA	Notice of Hearing - Motion for Restitution	John Melanson
4/25/2007	SNIC	POLLARD	Sentenced To Incarceration (I18-915 {F} Assault Or Battery Upon Certain Personnel) Confinement terms: Credited time: 143 days. Penitentiary determinate: 5 years.	John Melanson
	SNIC	POLLARD	Sentenced To Incarceration (I19-2514 Enhancement-persistent Violator) Confinement terms: Penitentiary determinate: 5 years. Penitentiary indeterminate: 20 years.	John Melanson
	CONC	POLLARD	Concurrent Sentencing (I19-2514 Enhancement-persistent Violator) Consecutive Sentence: To Run Consecutive with Part I Count II Battery on an Officer Concurrent with:	John Melanson
	CONC	POLLARD	Concurrent Sentencing (I18-915 {F} Assault Or Battery Upon Certain Personnel) Consecutive Sentence: Consecutive with Ct. III Part II Persistent Violator Concurrent with:	John Melanson
	JDMT	POLLARD	Judgment of Conviction, Order of Commitment: Part I, Battery on an Officer; and Part II, Persistent Violator	John Melanson

000405

Date: 3/10/2009

Judicial District Court - Cassia County

User: SUTHERLAND

Time: 08:36 AM

ROA Report

Page 6 of 13

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User		Judge
4/27/2007	NOTC	POLLARD	Notice of Appeal	John Melanson
	MOTN	POLLARD	Motion for Appointment of State Appellate Public Defender	John Melanson
	APDC	KRAMER	Appeal Filed in District Court	John Melanson
	APSC	KRAMER	Appealed to the Supreme Court	John Melanson
4/30/2007	BNDE	POLLARD	Surety Bond Exonerated (Amount 2,500.00)	John Melanson
5/1/2007	MOTN	POLLARD	Motion for Correction of Illegal Sentence and Modify Current Sentence Under Rule 35	John Melanson
	MOTN	POLLARD	Motion for Appointment of New Counsel - Affidavit in Support of Motion for Appointment of New Counsel	John Melanson
	MOTN	POLLARD	Motion to Review Sentence Pursuant to Idaho Criminal Rule 35	John Melanson
	MOTN	POLLARD	Motion for Attorney's Fees	John Melanson
5/2/2007	OBJT	POLLARD	Objection to Defendant's Motion to Reconsider Sentence	John Melanson
5/3/2007	ORDR	POLLARD	Order Appointing a State Appellate Public Defender	John Melanson
	ORDR	POLLARD	Order For Attorney's Fees	John Melanson
5/14/2007	CONT	TARA	Continued (Motion 05/30/2007 08:30 AM) IN CASSIA	John Melanson
		TARA	Notice of Hearing - Motion	John Melanson
5/30/2007	CMIN	TARA	Court Minutes - continue - appoint C. Zollinger	John Melanson
	ORDR	TARA	Order Appointing Counsel - CLAYNE ZOLLINGER	John Melanson
	ORPD	TARA	Defendant: Herrera, Valentino Alex Order Appointing Public Defender Public defender Clayne S Zollinger	John Melanson
/8/2007	MOTN	POLLARD	Motion for Attorney's Fees	John K Butler
/11/2007	CONT	TARA	Continued (Motion 07/06/2007 08:30 AM) Rule 35 Motion / Motion for Restitution IN Rupert	John Melanson
		TARA	Notice of Hearing - Rule 35 Motion / Motion for Restitution	John Melanson
	RDIS	POLLARD	Request For Discovery	John Melanson
12/2007	SSDR	POLLARD	State's Supplemental Discovery Response	John Melanson
3/2007	ORDR	POLLARD	Order for Attorney's Fees	John K Butler
	AMND	POLLARD	Amended / Supplemental Motion for Correction or Reduction of Sentence, ICR 35 and Memorandum in Support	John Melanson
4/2007	NOTC	KRAMER	Amended Notice of Appeal	John Melanson
12/2007	MOTN	POLLARD	Motion for Payment of Attorney's Fees	John Melanson
1/2007	ORDR	POLLARD	Order Approving Payment of Attorney	John Melanson

Date: 3/10/2009

Judicial District Court - Cassia County

User: SUTHERLAND

Time: 08:36 AM

ROA Report

Page 7 of 13

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User		Judge
7/6/2007	MOTC	NEVAREZ	Motion To Continue	John Melanson
7/9/2007	CONT	TARA	Continued (Motion 07/26/2007 09:00 AM) Rule 35 Motion / Motion for Restitution IN Rupert	John Melanson
7/10/2007	ORDR	TARA	Order of Continuance	John Melanson
7/26/2007	CONT	TARA	Continued (Motion 08/31/2007 02:00 PM) Rule 35 Motion / Motion for Restitution	John Melanson
		TARA	Notice of Hearing - Rule 35 Motion / Motion for Restitution	John Melanson
	CMIN	POLLARD	Court Minutes - Continued	John Melanson
8/22/2007	MOTN	POLLARD	Motion for Payment of Attorney's Fees	John Melanson
8/23/2007	ORDR	POLLARD	Order Approving Payment of Attorney	John Melanson
8/31/2007	CONT	TARA	Continued (Motion 10/16/2007 08:30 AM) Rule 35 Motion / Motion for Restitution	John Melanson
		TARA	Notice of Hearing - Rule 35 Motion / Motion for Restitution	John Melanson
	CMIN	TARA	Court Minutes - continued	John Melanson
10/2/2007	CONT	TARA	Continued (Motion 10/18/2007 09:00 AM) Rule 35 Motion / Motion for Restitution	John Melanson
		TARA	AMENDED Notice of Hearing - Rule 35 Motion / Motion for Restitution	John Melanson
10/11/2007	CONT	TARA	Continued (Motion 11/01/2007 08:30 AM) Rule 35 Motion / Motion for Restitution	John Melanson
		TARA	2nd AMENDED Notice of Hearing - Rule 35 Motion / Motion for Restitution	John Melanson
	MOTN	TARA	Motion to Continue	John Melanson
11/15/2007	ORDR	TARA	Order to Continue	John Melanson
11/1/2007	CMIN	TARA	Court Minutes Hearing type: Rule 35 Motion / Motion for Restitution Hearing date: 11/1/2007 Time: 8:43 am Court reporter: Maureen Newton	John Melanson
	HRHD	TARA	Hearing result for Motion held on 11/01/2007 08:30 AM: Hearing Held Rule 35 Motion / Motion for Restitution	John Melanson
	REST	TARA	Order Of Restitution - Cassia County District Court Fund \$1,425.00	John Melanson
	REST	TARA	Order Of Restitution - MCCJC \$ 155.94	John Melanson
01/01/2007	NOTC	KRAMER	Notice of Appeal - Restitution	John Melanson
	CCOM	KRAMER	Clerks Certificate Of Mailing	John Melanson

000407

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
11/30/2007	ORDR	TARA	Memorandum Decision and Order on Motion to Reconsider Sentence I.C.R. 35
	HRSC	TARA	Hearing Scheduled (Sentencing 01/08/2008 01:00 PM)
		TARA	Notice of Hearing - Sentencing
12/12/2007	MOTN	NEVAREZ	Motion for Appointment of State Appellate Public Defender
12/14/2007	ORDR	NEVAREZ	Order for Appointment of State Appellate Public Defender
		TARA	Order Approving Attorney's Fees \$104.50
12/19/2007	ORDR	TARA	Order to Transport (from Boise to MCCJC for sentencing on 01/08/08)
	MOTN	NEVAREZ	Motion to Transport
12/21/2007	MOTN	TARA	Motion for New Trial, Striking of the Presentence Addendum, Striking of Psychological Examination and Petition for New Examination, Motion to Strike Persistent Violator Charge, Motion for Appointment of New Counsel, Motion to Withdraw Guilty Plea, Motion for Bail Pending Appeal
	MOTN	TARA	Motion for New Trial and Appointment of New Counsel
	HRSC	TARA	Hearing Scheduled (Motion 01/08/2008 01:00 PM) Pending Pro se Motions
		TARA	Notice of Hearing - Pending Motions
1/4/2008		NEVAREZ	Memorandum of Law And Correction
1/8/2008	CMIN	TARA	Court Minutes Hearing type: SENTENCING Hearing date: 1/8/2008 Time: 1:23 pm Court reporter: Denise Schloder
	ORDR	TARA	Order Appointing Counsel - David Haley
1/16/2008	CONT	TARA	Continued (Sentencing 01/24/2008 08:30 AM) Pending Pro se Motions
		TARA	Notice of Hearing - Pending Pro se Motions & SENTENCING
2/3/2008	LETR	TARA	Letter Received from Defendant copies forwarded to Counsel and Judge
2/24/2008	CONT	TARA	Continued (Sentencing 02/11/2008 02:30 PM) Pending Pro se Motions IN RUPERT
		TARA	Notice of Hearing - Sentencing / Pending Motions
3/3/2008	LETR	TARA	Letter Received from defendant re: filing of motion
		TARA	Memorandum of Law and correction
3/10/2008	CMIN	TARA	Court Minutes on Defendant's Motions and for Re-Sentencing

Date: 3/10/2009

Judicial District Court - Cassia County

User: SUTHERLAND

Time: 08:36 AM

ROA Report

Page 9 of 13

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
2/14/2008	HRSC	TARA	Hearing Scheduled (Status 03/14/2008 02:00 PM)
		TARA	Notice of Hearing - STATUS CONFERENCE
3/14/2008	CMIN	SUTHERLAND	Court Minutes Hearing type: Status Hearing date: 3/14/2008 Time: 2:22 pm Court reporter: Maurine Morton
	HRHD	TARA	Hearing result for Status held on 03/14/2008 02:00 PM: Hearing Held
	ORDR	TARA	Order Appointing Counsel - Michael Tribe
	HRSC	TARA	Hearing Scheduled (Status 04/14/2008 01:00 PM)
		TARA	Notice of Hearing - Status
3/20/2008	MOTN	NEVAREZ	Motion for Payment of Attorney Fees
4/2/2008	ORDR	TARA	Order Approving Payment of Attorney (\$148.50)
4/14/2008	CMIN	TARA	Court Minutes Hearing type: Status Hearing date: 4/14/2008 Time: 1:00 pm Court reporter: Maureen Newton
	HRHD	TARA	Hearing result for Status held on 04/14/2008 01:00 PM: Hearing Held
	HRSC	TARA	Hearing Scheduled (Motion 05/05/2008 01:00 PM) Pending Motions
	HRSC	TARA	Hearing Scheduled (Sentencing 05/19/2008 01:00 PM) Sentencing
		TARA	Notice of Hearing - Pending Motions
		TARA	Notice of Hearing - Sentencing
5/2/2008	CONT	TARA	Continued (Motion 05/19/2008 01:00 PM) Pending Motions
	CONT	TARA	Continued (Sentencing 06/09/2008 02:30 PM) Sentencing
	MOTN	TARA	Motion to Continue
5/2008	ORDR	TARA	Order to Continue
8/2008	LETR	TARA	Letter Recieved from Defendant
	LETR	TARA	Letter Recieved from Defendant
12/2008	LETR	TARA	Letter Recieved from Defendant
	LETR	TARA	Letter Recieved from Defendant
6/2008		TARA	Memorandum in Support of Pro se Motions
9/2008	180R	ALBERTSON	180 Day Review Evaluation Report**filed**
	CMIN	TARA	Court Minutes Hearing type: Pending Motions Hearing date: 5/19/2008 Time: 1:08 pm Court reporter: Maureen Newton
	CONT	TARA	Hearing result for Motion held on 05/19/2008 01:00 PM: Continued Pending Motions
	LETR	TARA	Letter Recieved from Defendant

Date: 3/10/2009

Judicial District Court - Cassia County

User: SUTHERLAND

Time: 08:36 AM

ROA Report

Page 10 of 13

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
5/19/2008	LETR	TARA	Letter Recieved from Defendant
		TARA	Notice of Hearing - Pending Motions
5/23/2008	LETR	TARA	Letter Recieved from defendant
5/28/2008	LETR	TARA	Letter Recieved from Defendant
6/3/2008	LETR	TARA	Letter Recieved from Defendant
6/9/2008		TARA	State's Memorandum opposing pro se motions
	CMIN	TARA	Court Minutes Hearing type: Pending Motions / Sentencing Hearing date: 6/9/2008 Time: 2:32 pm Court reporter: Maureen Newton
	HRHD	TARA	Hearing result for Pending Motions held on 06/09/2008 02:30 PM: Hearing Held Pending Motions
6/11/2008		TARA	Billing Statement \$1,474.50 approved by Judge Melanson
7/28/2008	ORDR	TARA	Memorandum Decision and Order on Defendant's Post-Trial Motions 1. Motion for New Trial - DENIED 2. Motion to Strike or Suppress Psycho Exam and APSI - DENIED 3. Motion to Strike Per Vio Charge - DENIED 4. Motion for Bail pending Appeal - DENIED 5. Motion to w/draw guilty plea - GRANTED 6. Other pro se Motions - DENIED
	HRSC	TARA	Hearing Scheduled (Status 09/05/2008 01:00 PM) IN CASSIA COUNTY
	HRSC	TARA	Hearing Scheduled (Jury Trial 09/23/2008 09:00 AM) trial should only be one day
		TARA	Notice of Hearing - Status Conference
	NOTS	TARA	Notice Of Trial Setting
4/2008		TARA	Billing Statement for \$451.00 Approved
5/2008	MOTN	TARA	Motion for Automatic Disqualification of District Judge in Pending Jury Trial etc. etc.
25/2008	MTDI	WOODBURY	Motion To Dismiss Part II
7/2008	ORDR	TARA	Order Denying Motion to Disqualify Judge Without Cause Rule 25, I.C.R
8/2008	OBJT	TARA	Objection to Defendant's Motion to Dismiss
2008	MOTN	CARPENTE	Motion to Continue Hearing
	MOTN	CARPENTE	Motion for Appointment of New Counsel
	AFFD	CARPENTE	Affidavit of Defendants Motion for Appointment of New Counsel
2008		TARA	Memorandum of Law and Correction
	REQU	TARA	Request for Hearing

000410

Date: 3/10/2009

Judicial District Court - Cassia County

User: SUTHERLAND

Time: 08:36 AM

ROA Report

Page 11 of 13

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
9/5/2008		TARA	Notice of Hearing - Defendant's Motion for Appointment of New Counsel
	CMIN	TARA	Court Minutes Hearing type: Status Hearing date: 9/5/2008 Time: 1:00 pm Court reporter: Maureen Newton
	HRHD	TARA	Hearing result for Status held on 09/05/2008 01:00 PM: Hearing Held Defendant's Motion for Appointment of New Counsel
	ORDR	TARA	Order DENYING Motion for Appointment of New Counsel
		TARA	Defendant allowed to represent himself pro se
	HRSC	TARA	Hearing Scheduled (Pretrial Conference 09/18/2008 09:00 AM)
		TARA	Notice of Hearing - PRETRIAL CONFERENCE
9/10/2008	HRSC	TARA	Hearing Scheduled (Motion 09/18/2008 09:00 AM) Defendant's Motion to Dismiss Part 2 - Persistent Violator Status
		TARA	Notice of Hearing - request from defendant to set defendant's Motion to Dismiss Part 2 - Persistent Violator for hearing
		TARA	Notice of Hearing -Defendant's Motion to Dismiss Part 2 - Persistent Violator
	ORDR	TARA	Order Granting Defendant's Motion to Proceed Pro Se and Appointing Standby Counsel
	ORDR	TARA	Order re: Scope of Duties of Standby Counsel
		TARA	Pretrial Order
9/16/2008	SSDR	TARA	4th State's Supplemental Discovery Response
	SUBR	TARA	Subpoena Returned - Cassia Magistrate Clerk
9/17/2008	SUBR	NEVAREZ	Subpoena Returned *K McMurray 09/16/2008
	SUBR	NEVAREZ	Subpoena Returned *D Dexter 09/16/2008
	SUBR	NEVAREZ	Subpoena Returned *D Whipple 09/16/2008
		TARA	Memorandum in Support of Motion to Dismiss Part II Persistent Violator Status and Memorandum of law and correction
9/18/2008	CMIN	TARA	Court Minutes Hearing type: Status / Motion Hearing date: 9/18/2008 Time: 8:59 am Court reporter: Denise Schloder
	HRHD	TARA	Hearing result for Pretrial Conference held on 09/18/2008 09:00 AM: Hearing Held
	HRHD	TARA	Hearing result for Motion held on 09/18/2008 09:00 AM: Hearing Held - DENIED
		TARA	Billing Statement \$803.00
	SUBR	WOODBURY	Subpoena Returned-Mike Biggins
9/22/2008		TARA	Order Denying Motion to Dismiss Part II of the Information

State of Idaho vs. Valentino Alex Herrera

Date	Code	User		Judge
9/19/2008	MOTN	TARA	Motion to Terminate Pro Se Representation	John Melanson
9/22/2008		TARA	Motion to Continue Hearings	John Melanson
		TARA	Notice of Hearing re: Motion to Continue Trial	John Melanson
		TARA	Motion to Reconsider Motion to Dismiss Part II Amended Information Persistent Violator and Memorandum in Support of Motion to Dismiss Part II Amended Information Persistent Violator	John Melanson
		TARA	Notice of Hearing re: Motion to Reconsider	John Melanson
		TARA	Notice of Hearing re: Motion to Terminate	John Melanson
		TARA	Notice of Hearing re: Disqualification of Judge	John Melanson
		TARA	Memorandum in Support of Motion to Reconsider Motion to Dismiss Part II Amended Information and Memorandum in Support of Motion to Dismiss Count II Persistent Violator Status from Amended Information and Motion in Limine	John Melanson
		TARA	Notice of Hearing re: Memorandum	John Melanson
	HRSC	TARA	Hearing Scheduled (Motion 09/23/2008 08:30 AM) Pending Motions	John Melanson
		TARA	Notice of Hearing - PENDING MOTIONS	John Melanson
9/23/2008	CMIN	TARA	Court Minutes Hearing type: Pending Motions Hearing date: 9/23/2008 Time: 8:27 am Court reporter: Maureen Newton	John Melanson
	CMIN	TARA	Court Minutes Hearing type: Jury Trial Hearing date: 9/23/2008 Time: 8:36 am Court reporter: Maureen Newton	John Melanson
	HRHD	TARA	Hearing result for Motion held on 09/23/2008 08:30 AM: Hearing Held Pending Motions	John Melanson
	JTST	TARA	Hearing result for Jury Trial held on 09/23/2008 09:00 AM: Jury Trial Started	John Melanson
		TARA	Jury Roll Call	John Melanson
		TARA	Peremptory Challenge	John Melanson
		TARA	Seating Chart	John Melanson
		TARA	Jury Instructions	John Melanson
		TARA	Jury Verdict - YES to questions 1, 2, 3, & 4	John Melanson
	HRSC	TARA	Hearing Scheduled (Sentencing 10/27/2008 01:30 PM)	John Melanson
	OPSI	TARA	Order To Attend Psi Interview & Appear For Sentencing	John Melanson
		TARA	Notice of Hearing - SENTENCING	John Melanson
2008	SUBR	TARA	Subpoena Returned - Juror J. Rocha	John Melanson
	SUBR	TARA	Subpoena Returned - Juror A. Herrera	John Melanson
10/2008	CMIN	WOODBURY	Court Minutes Hearing type: Order To Show Cause Hearing date: 10/10/2008 Time: 8:59 am	John Melanson

Date: 3/10/2009

Time: 08:36 AM

Page 13 of 13

Judicial District Court - Cassia County

User: SUTHERLAND

ROA Report

Case: CR-2006-0003507 Current Judge: John Melanson

Defendant: Herrera, Valentino Alex

State of Idaho vs. Valentino Alex Herrera

Date	Code	User	Judge
10/22/2008	CONT	TARA	Continued (Sentencing 10/27/2008 03:30 PM)
		TARA	Notice Hearing Vacated and Reset
10/24/2008	PRES	TARA	UPDATED Pre-Sentence Investigation Report Document sealed
	MOTN	CONNIE	Motion to Arrest Judgment
10/27/2008	CMIN	TARA	Court Minutes Hearing type: Sentencing Hearing date: 10/27/2008 Time: 3:31 pm Court reporter: Maureen Newton
	DCHH	TARA	Hearing result for Sentencing held on 10/27/2008 03:30 PM: District Court Hearing Held Court Reporter: Maureen Newton Number of Transcript Pages for this hearing estimated: 500 for all hearings
	JDMT	TARA	Judgment of Conviction and Order of Commitment
10/28/2008		TARA	Billing Statement \$ 1,028.50 approved
11/4/2008	ORDR	TARA	Order DENYING Defendant's Motion (to Arrest Judgment)
	REST	TARA	Order Of Restitution - Cassia County District Court \$1,425.00
	REST	TARA	Order Of Restitution - MCCJC \$155.94
11/19/2008		TARA	Billing Statement \$ 566.50
12/4/2008	NOTC	NEVAREZ	Notice of Appeal
		SUTHERLAND	Notice of Appeal
12/12/2008	MOTN	NEVAREZ	Motion for Appointment of State Appellate Public Defender
12/19/2008		SUTHERLAND	Order for Apponitment of State Appellate Public Defender
1/20/2009		TARA	Billing Statement \$ 83.00
1/4/2009	OBJT	TARA	Objection to Defendant's Motion to Reconsider Sentence
		SUTHERLAND	Motion to Correct an Illegal Sentence
5/2009	MOTN	NEVAREZ	Motion for Withdrawal as Attorney of Record

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

State of Idaho)	
)	
Plaintiff/Respondent,	)	District Court No. CR-2006-3507*D
)	
Vs.)	
	)	Supreme Court No. 34818
Valentino Herrera)	
)	
Defendant/Appellant,	)	CERTIFICATE OF SERVICE
)	
)	

I, Amy Kramer, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that I have personally served or mailed, by X United States mail, ___ hand delivery, one copy of the Clerk's Record and Court Reporter's Transcript to the following Attorney's in this cause as follows:

Lawrence Wasden
Attention: Appellate Unit
700 West Jefferson Street
Boise Idaho 83720-0010

Molly Huskey
State Appellate Public Defender
3647 Lake Harbor Lane
Boise Idaho 83703

IN WITNESS WHEREOF, I have hereunto set my hand the affixed seal of the said Court
this 11th day of March, 2009.

LARRY A MICKELSEN, Clerk of the Court

By [Signature]
Stella Sutherland, Deputy Clerk

CERTIFICATE OF SERVICE

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

State of Idaho)	
)	
Plaintiff/Respondent,	)	District Court No. CR-2006-3507*D
)	
Vs.)	
	)	Supreme Court No. 34818
Valentino Herrera,)	
)	
Defendant/Appellant,	)	CLERK'S CERTIFICATE
)	
)	

I, Larry A Mickelsen, Clerk of the District Court, of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that the foregoing documents in the above-entitled cause were compiled under my direction and are true and correct copies of the pleadings, documents and papers designated to be included under Rule 28, Notice of Appeal and the entire reporter's transcript.

I do further certify that all exhibits offered or admitted in the above-entitled cause and confidential exhibits will be lodged with the Clerk of the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court on the 11th day of March, 2009.

LARRY A MICKELSEN
CLERK OF THE DISTRICT COURT

By 
Stella Sutherland, Deputy Clerk

CLERK'S CERTIFICATE